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ABSTRACT

Civil rights issues affecting the Latino community in Washington (District of Columbia) were explored in a 3-day fact-finding hearing involving the sworn testimony of more than 100 witnesses. Information from extensive field investigation and research was also included. The District's Latino population is a small but rapidly increasing minority group that is predominantly low skilled, poor, and in need of social services. Most are either undocumented immigrants or Salvadorans. Police community relations are strained in part due to the District's Civilian Complaint Review Board's inability to investigate and process citizen complaints of police misconduct. In addition, Latinos entering the District court system face severe disadvantages due to ignorance and language barriers. Despite Latino pressure to increase the number of Latinos in the city government, the number of Hispanics in government is proportionately low. Language and cultural barriers limit access to health and social services for Latino residents. Further inadequate low-income housing and lack of educational services are major problems for inner city Latinos. Barriers to educational opportunity such as insufficient bilingual and English-as-a-Second-Language programs; unequal immigrant access to public schools, especially for limited-English-proficient (LEP) students; the resort to corporal punishment by frustrated teachers; problems connected with Latino eligibility for in-state tuition; and communication problems among parents, teachers, and school administrators are considered. A pattern of police misconduct, government resistance to hiring Hispanics, and failure to address bilingual service needs exist. The report includes dissenting views by Commissioner Carl A. Anderson, a police department response to the report, and correspondence. (JB)

ED359294

Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume I: The Mount Pleasant Report

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January 1993

A Report of the United States Commission on Civil Rights

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U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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*** Term expired January 16, 1993.

Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume I: The Mount Pleasant Report

January 1993

A Report of the United States Commission on Civil Rights

Letter of Transmittal

January 1993

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

The United States Commission on Civil Rights transmits this report to you pursuant to Public Law 98-183, as amended. It is based on a 3-day factfinding hearing, the sworn testimony of more than 100 witnesses, as well as months of field investigation and research, including subpoenaed data.

The Mount Pleasant Report is the first volume of a series of Commission reports on *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination.* In undertaking this project, the Commission realized that the Nation is at a crossroads. How the Nation responds in this critical hour to its increasingly diverse population, the well-evidenced racial and ethnic tensions, and the frustration of unmet needs in our cities, will determine the future well-being and progress, not only of its urban communities, but of the Nation as a whole.

Although the focus of this report is on civil rights issues affecting the Latino community in Washington, D.C., our findings and recommendations, particularly with respect to police misconduct and the lack of bilingual services in critical areas such as health, social services, education, and criminal justice, will likely apply to other localities across the Nation.

Most of the recommendations are directed to the District of Columbia government; however, this Commission has found an urgent and compelling need for Federal attention to the civil rights issues confronting the District of Columbia and other urban localities. Like many American cities, the District has experienced a steady wave of immigration, including large numbers of impoverished, poorly educated, non-English-speaking peoples. The inability or unwillingness of urban governments to meet the needs of these immigrants has resulted in new unmet needs piling on top of needs unmet for decades. The frustrations that these conditions have wrought are both substantial and volatile, and must be addressed urgently and forthrightly at all levels of government. Nowhere, however, is this commitment more urgently needed than at the Federal level. We urge the Executive and Legislative branches to act creatively and with dispatch to implement applicable recommendations in this report and to move forward with a program for meeting the dire needs of America's communities. The Commission believes that this report will be useful in the formulation of that program.

Respectfully,

For the Commissioners,
Arthur A. Fletcher, *Chairperson*

Preface

> [W]e welcome you with joy. I am Hispanic, but, above all, I'm a Washingtonian. And we want you to look at Washington. We want you to help us grow. We want you to help us learn from each other. . . . [M]ore than anything, we want you to remember this is a city that has gone through pain; this is a city that needs healing.[1]
>
> —Maria Charito Kruvant, Chairperson, District of Columbia Advisory Committee to the United States Commission on Civil Rights.

With this welcome, Charito Kruvant framed the challenge before this Commission as it began 3 days of public hearings on civil rights issues underlying a May 1991 civil disturbance described by Latino community leaders as a "manifestation of frustration" stemming from "years of harassment, resentment, and rejection."[2] Nine months earlier, several blocks of contiguous D.C. neighborhoods—Adams Morgan and Mount Pleasant—home to both its most heterogeneous population as well as its largest concentration of Latinos, erupted in a violent confrontation with police that included the burning of stores, restaurants, and police cars. The spark that ignited the protest on May 5, 1991, was the shooting of a Salvadoran male by a rookie police officer attempting to arrest him on charges of public drinking. In the aftermath of the disturbance, this Commission's Advisory Committee for the District of Columbia immediately convened a public forum in Mount Pleasant to hear the concerns of community members, including the newly formed D.C. Latino Civil Rights Task Force, representing a broad cross-section of Latino community and business leaders. Speaking for the task force, Chairman Pedro Aviles described the underlying causes of the disturbance in terms of serious, continuing violations of the civil rights of Latinos and requested a thorough investigation of specific allegations, including police abuse of Latino residents, discriminatory hiring practices by the D.C. government, and a systemwide failure by the District to provide social services required by the Latino community.[3]

This Commission, already engaged in a nationwide examination of the causes of increased racial and ethnic tensions in American communities, responded by selecting the District as the project's first hearing site and immediately began a 6-month investigation of the Latino Task Force's allegations. As an independent, bipartisan factfinding agency, this Commission was perhaps uniquely qualified for this role, having carried out its statutory mandate to investigate allegations of civil rights violations and denials of equal protection of the law over a period of more than three decades. Moreover, its ensuing examination of the issues and search for solutions paralleled undertakings by the Commission in other cities, particularly in Miami, Florida, where it investigated the underlying causes of a May 1980 riot and brought to national attention the civil rights concerns of that city's black minority.

One significant distinction, however, between the context of this situation and others should be noted at the outset of this report, just as it was noted and discussed at the outset of the Mount Pleasant hearing. As Ms. Kruvant put it, "it would be impossible to look at the issues of the Latino community within the District of Columbia without addressing the larger needs, our partners in Congress, our partners in the Federal Government."[4] Mayor Sharon Pratt Kelly, also in remarks at the outset of the hearing, observed that as a partner with the District, the Federal Government was not paying its fair share of the District's expenses and that "a measure of civil rights has been denied to all the people of the District of Columbia in terms of not having the political powers" that a State has.[5] These issues are discussed in this report only to the extent necessary to understand the social, political, and economic fabric of the District of Columbia and the controversy these issues generate. The Mount Pleasant Hearing did not focus specifically on the fairness of the Federal payment or on voting representation under any of the proposals that have been introduced in Congress in recent years. Therefore, the Commission makes no findings or recommendations regarding these issues in this report. The Commission does believe, however, that Federal attention to most cities, and the District of Columbia, must be increased if local governments are to resolve the problems proliferating from a national urban trend of unmet needs piling on top of unmet needs.

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[1] Maria Charito Kruvant, Chairperson, D.C. Advisory Committee to the U.S. Commission on Civil Rights, remarks, *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, 1992, vol. 1, p. 45 (hereafter *Hearing Transcript*).

[2] Pedro Aviles, Chairman, D.C. Latino Civil Rights Task Force, testimony, *Hearing Transcript*, vol. I, p. 77.

[3] Pedro Aviles, Chairman, D.C. Latino Civil Rights Task Force, remarks, *Special Briefing and Program Planning Session Before the D.C. Advisory Committee to the U.S. Commission on Civil Rights*, Washington, D.C., May 15, 1991, pp. 13-23.

[4] Kruvant, remarks, *Hearing Transcript*, vol. 1, p. 49.

Washington, D.C., is an example in the very shadow of the capitol dome of the urgent need for an urban policy that recognizes the existence, as well as the volatility, of human frustrations borne of years of inadequate attention at all levels of government to needs of the predominantly minority, urban poor. This Commission is sympathetic, therefore, to Mayor Kelly's observation that the Federal Government shares responsibility for the District's failures to meet the needs of its new immigrant population. We also agree, however, with the observation that the District government itself has sufficient political and economic power "to rectify systemic imbalances"[6] in its treatment of Latinos. While resolution of the District's broader civil rights issues must be forthcoming, the District itself has an urgent need, and the ability, to address in large measure many of the civil rights issues of the Latino community.

Neither the District's own limited political representation, nor the constraints placed on its ability to collect revenues and pay for the needs of its citizens should in any way hamper its ability to address the civil rights concerns of its Latino minority. This point was made at the hearing by the chairman of the D.C. Latino Civil Rights Task Force, in response to Mayor Kelly's observation that both the Federal Government generally, and the Congress in particular, share responsibility for the District's failures to meet the needs of its new, immigrant population: the former by failing to provide cities with funds to meet the needs of waves of immigrants swelling their populations; and the latter for the specific budget constraints it places on the District of Columbia.

Another point the Commission wishes to emphasize with respect to the broader implications of this report, is that the problems described herein are not peculiar to the District of Columbia, but are manifestations of problems prevalent in many cities around the country.[7] Just as the District of Columbia has seen a large increase in the size of its Hispanic population over the last 10 years, communities across the nation have experienced similar or even more dramatic demographic changes in recent years. The United States Hispanic population grew by 53 percent during the 1980s,[8] and Hispanics are projected to become the nation's largest minority group by the year 2010.[9] Cities across the country have Hispanic majorities or sizable Hispanic minorities: El Paso, Texas is 69 percent Hispanic; Santa Ana, California, 65 percent; Miami, Florida, 62 percent; San Antonio, Texas, 56 percent; Corpus Christi, Texas, 50 percent; Los Angeles, California, 40 percent; Albuquerque, New Mexico, 34 percent; Newark, New Jersey, 26 percent; and New York, New York, 24 percent.[10]

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[5] Mayor Sharon Pratt Kelly, District of Columbia, remarks, *Hearing Transcript*, vol. 1, p. 18.

[6] Aviles Testimony, *Hearing Transcript*, vol. 1, p.79.

[7] *See* David Yniguez, Vice President for Technical Assistance and Constituency Support, National Council of La Raza, testimony, *Hearing Transcript*, vol. 1, pp. 89-90.

[8] U.S. Department of Commerce, Bureau of the Census, News Release, June 12, 1991 (Census Bureau releases 1990 Census counts for specific racial groups).

[9] Margaret L. Usdansky, "'Diverse' Fits Nation Better Than 'Normal,'" *USA Today*, May 29, 1992, p. 7A (hereafter 'Diverse' Fits Nation).

[10] Barbara Reynolds, "Hispanics Feel Like Aliens in Own Home," *USA Today*, May 9, 1991, p. 11A.

Moreover, 14 percent of the American public lives in households in which a language other than English is spoken;[11] three-fourths of the residents of Miami, Florida, come from such a household.[12] Approximately one in 20 of America's elementary and secondary students has limited English proficiency,[13] with two-thirds speaking Spanish and 15 percent speaking an Asian language.[14] State and local governments across the country, some more progressively and successfully than others, are implementing initiatives to improve the delivery of services to limited-English-proficient residents.

Not only does the Mount Pleasant disturbance reflect the frustrations of a growing Hispanic population whose needs are being underserved by government, but it is also a reflection of a more general national problem of mounting racial and ethnic tensions. Barely a year after the Washington, D.C., disturbance, rioting broke out in Los Angeles when four white police officers who had been videotaped beating a black motorist were found not guilty of a number of charges, including assault, by a jury that included no blacks. In every way, the Los Angeles conflagration dwarfed the Mount Pleasant disturbance—more than 40 people were killed, thousands were injured, and $750 million in property was damaged or destroyed.[15] Calm was restored in Los Angeles only after 4,000 Army and Marine troops were moved into the area. The verdict had also sparked disruptions in several other cities. However, despite the difference in magnitude between the Los Angeles and Mount Pleasant disturbances, they will probably reveal the same underlying causes of urban upheaval.

For this Commission, the Los Angeles riot was an unfortunate confirmation of the rightness of its conclusion in February of 1991 that racial and ethnic tensions in communities across the Nation were again at a critical point and that no other problem more urgently warranted the agency's attention. The following is the first of several reports that will be forwarded to the President and the Congress as the Commission continues work on its project, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination.*

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[11] Usdansky, "'Diverse' Fits Nation," p. 1A.

[12] Barbara Vobejda, "A Nation in Transition," *Washington Post*, May 29, 1992, pp. A1, A19.

[13] Carol Innerst, "Immigrant Influx Gives U.S. Schools Bilingual Headache," *Washington Times*, Aug. 6, 1992, p. A7.

[14] Todd Wallack, "Schools See More Kids With Limited English," *USA Today*, Aug. 11, 1992, p. 1D.

[15] California State Assembly, Assembly Special Committee on the Los Angeles Crisis, *To Rebuild is Not Enough: Final Report and Recommendations of the Assembly Special Committee on the Los Angeles Crisis*, Sept. 28, 1992, p. 1.

Acknowledgments

This report was written under the supervision of General Counsel Carol McCabe Booker by: Patricia Orloff Grow, Susan T. Muskett, Jeffrey P. O'Connell, Stella G. Youngblood, attorneys; and Eileen E. Rudert, and Nadja Zalokar, social scientists. James S. Cunningham, Assistant Staff Director for Civil Rights Evaluation, provided extensive statistical analyses in the chapters on police-community relations and civilian review of complaints.

The Mount Pleasant hearing culminated a 6-month investigation by the Commission's Office of General Counsel, for which Susan T. Muskett, project director, and Patricia Orloff Grow, staff attorney, were primarily responsible. The Commission's Eastern Regional Office provided substantial support in this effort, particularly through civil rights analyst Edward Darden.

The Commission appreciates the efforts of all Commission staff on this project, and particularly acknowledges the special contributions of bilingual staff members, Myrna Carter, Edna Laverdi, Emma Monroig, and Bernard Murillo; Frederick Isler for his expertise in equal employment opportunity; and Audrey Wright, Theresa Kerrigan, and Maria Sims for clerical support. The report was prepared for publication by Gloria Hong Izumi.

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Chapter 1. Overview

Latinos in the District of Columbia

Neither the size nor the socioeconomic makeup of the District's Latino population is known with precision; available information paints a picture of the District's Latinos as a small, but rapidly increasing, minority of the District's population, residentially concentrated in the Mount Pleasant area, hardworking or looking hard for work, predominantly low skilled, poor, and in need of social services.

According to the 1990 census, the District has 32,710 Hispanics, 5.4 percent of its total population (see table 1.1), but knowledgeable sources claim that figure is grossly inaccurate. The Mayor's Office on Latino Affairs (OLA) uses a higher estimate of the Hispanic population, 65,000, or 10 percent of the District's population, a figure that OLA considers very conservative.[1] The Latino Civil Rights Task Force says it may be as high as 85,000, or 12 percent.[2] The higher estimates are based largely on school enrollment figures, which do not provide sufficient information for determining accurately the size of the total Latino population.[3] Census counts, on the other hand, are likely to have missed many Latinos for a variety of reasons, including the reluctance of some Latinos to speak to census takers, whom they perceive as government officials (particularly in the case of undocumented immigrants), lack of English proficiency, lengthy absences from home due to multiple jobs, and shared or "doubled up" households. More than one-quarter of Hispanic households in the District are "doubled up," as compared to 16 percent of black, and 4 percent of white households.[4]

Unlike many other Hispanic communities across the Nation, the District's Latinos are predominantly Central American. The representation of Mexican Americans, Puerto Ricans, and Cubans, who together comprise the large majority of Hispanics nationwide, is very low in the District of Columbia—about 20 percent (see table 1.2). A majority of the remaining 80 percent are Central Americans, especially Salvadorans.[5]

Like other ethnic groups, Latinos in the District of Columbia are clustered, with over 40 percent living in Ward 1 (see table 1.3), which encompasses the Mount Pleasant-Adams Morgan area, where the May 1991 disturbance took place.[6] An analysis of the ethnic composition of census tracts further reveals that the District's Latinos are even more concentrated than suggested by the statistics on wards. Over 15 percent of the District's Hispanics live in three census tracts bordering 16th Street in Mount Pleasant. One of these tracts is almost 50 percent Hispanic, and the other two are just under one-third Hispanic (see table 1.2). Virtually all of the District's

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[1] Mara Lopez, Acting Director, Office on Latino Affairs, interview in Washington, D.C., Oct. 23, 1991.

[2] D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action: Final Recommendations to the District of Columbia Government* (October 1991), pp. 2-3 (hereafter *Latino Blueprint*).

[3] The following testimony by Pedro Aviles, Chairman of the Latino Civil Rights Task Force, suggests that the task force estimate of a Latino population of 65,000 to 85,000 may also be based on the presumption that few undocumented Latinos are counted by the Census. "[T]he D.C. Latino community numbers 65,000-85,000 . . . even though the Census of the United States claims that there are 32,710 persons of Hispanic descent. It has been estimated that there are between 65,000 and 85,000 Hispanics, given that most of the Latino population is undocumented. Most of them refuse to talk to Federal agents, such as members from the U.S. Census Bureau." Pedro Aviles, Chairman, D.C. Latino Civil Rights Task Force, testimony, *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, 1992, vol. 1, p. 77 (hereafter *Hearing Transcript*).

[4] District of Columbia, Office of the Mayor, Office of the Special Assistant for Human Resource Development, *Doubled-Up Households in the District of Columbia* (February 1989), table A, p. 8.

[5] Susan Benda, attorney, Arnold and Porter, testimony, *Hearing Transcript*, vol. 1, p. 96.

[6] Ibid.

TABLE 1.1
Population of the District of Columbia by Race and Ethnicity, 1980 and 1990

	1980		1990	
	Number	**Percentage**	**Number**	**Percentage**
Non-Hispanic whites	164,244	25.7	166,131	27.4
Non-Hispanic blacks	445,154	69.7	395,213	65.1
Hispanics	17,679	2.8	32,710*	5.4*
Other	11,256	1.8	12,846	2.1
Total	638,333	100.0	606,900	100.0

Source: District of Columbia, Office of Policy and Program Evaluation, *Indices: A Statistical Index to District of Columbia Services*, vol. 8 (August 1991), p. 79.

* The 1990 Census count of Hispanics in the District of Columbia does not reflect their true numbers in the District and may be a gross undercount.

TABLE 1.2
Hispanics by National Origin: District of Columbia and the Three Most Hispanic Census Tracts*

	District of Columbia		Census Tract 28.2		Census Tract 27.2		Census Tract 28.1	
	#	**%**	**#**	**%**	**#**	**%**	**#**	**%**
Mexican American	2,981	9.1	71	3.1	99	5.0	4	0.4
Puerto Rican	2,204	6.7	13	0.6	31	1.6	28	2.7
Cuban	1,241	3.8	16	0.7	32	1.6	16	1.6
Other Hispanic	26,284	80.4	2,156	95.6	1,809	91.8	984	95.3
Total Hispanic	32,710	100.0	2,256	100.0	1,971	100.0	1,032	100.0
Percent Hispanic	5.4		47.3		31.6		30.2	

Source: Census of Population and Housing, 1990: Summary Tape file 1 on CD-ROM, District of Columbia, machine readable data files, prepared by the Bureau of the Census (Washington: The Bureau, 1991).

* Census tracts are a small, relatively permanent statistical subdivision of a county or the District of columbia which were designed to have between 2,500 and 8,000 persons and to be relatively homogeneous with respect to population characteristics, economic status, and living conditions.

TABLE 1.3
Characteristics of the District of Columbia's Wards

	Districtwide	Ward 1	Ward 2	Ward 3	Ward 4	Ward 5	Ward 6	Ward 7	Ward 8
Population (1990)									
Total	606,900	79,729	81,638	83,204	78,425	75,054	70,669	69,312	68,869
Percent black	66	57	43	6	85	90	73	97	91
Percent Hispanic*	5	18	7	7	5	2	2	1	1
Percent change in population, 1980 to 1990									
Total population	-4.9	+1.3	+0.3	+7.0	-4.3	-9.1	-6.6	-15.8	-11.6
Hispanic population	+85.0	+131.0	+65.1	+52.1	+181.0	+48.4	+20.1	-11.4	+8.7
Population density (residents per total acreage)	22	66	21	15	25	16	31	20	18
Median household income	$22,400	$18,900	$23,000	$37,700	$24,000	$20,300	$21,700	$18,200	$17,000
Households in poverty	14%	18%	10%	3%	12%	19%	17%	21%	22%
Unemployment rate	6.6%	7.3%	5.7%	2.9%	5.7%	7.2%	6.9%	8.8%	10.8%

Source: District of Columbia, Office of Policy and Program Evaluation, *Indices: A Statistical Index to District of Columbia Services*, vol. VIII, (Washington, D.C., August 1991), pp. 29, 32, 38, 44, 49, 54, 59, 64, 69, 78–79, and 181.

* The 1990 Census count of Hispanics in the District of Columbia does not reflect their true numbers in the District and may be a gross undercount.

census tracts that are more than 10 percent Hispanic are contiguous.

The Socioeconomic Characteristics of District Latinos

Although 1990 census data on the socioeconomic status of Hispanics in the District of Columbia have not yet been released, available evidence suggests that Salvadorans and other Hispanics in the District of Columbia are typical of a nationwide socioeconomic pattern; that is, most have low average levels of educational attainment that limit their economic opportunities, and their labor market earnings are below those of both blacks and whites. The Hispanic poverty rate in the District of Columbia has been estimated to be higher than that for other groups.[7]

Despite their low education levels, primarily agrarian backgrounds, limited English proficiency, and in some cases, undocumented immigration status, most Salvadorans arriving in the Washington area during the economic-growth period of the 1980s sought—and were able to find—employment in the then-booming construction industry, as well as in hotel and restaurant work, and office building maintenance. These are typically low-paying jobs that are particularly vulnerable to economic fluctuations.[8]

There are many indications that the economic recession that hit the United States in 1989 had a particularly severe impact on the employment prospects of Latinos in the District of Columbia. Nationwide, Hispanics, like other minority groups, are particularly vulnerable to cyclical fluctuations in the economy. Hispanics consistently had an unemployment rate at least 50 percent higher than that of whites over the years 1973-84, and their unemployment rates increased more in absolute terms than those of whites during the three recessions (1975, 1980, and 1982) that occurred over that period.[9] One expert offers several explanations for why the employment of Hispanics might be particularly sensitive to variations in economic activity, including:

- "[T]he relatively high proportion of Hispanics in marginal firms and casual employment situations";[10]
- The recent immigration of many Hispanics, which means that they have relatively low tenure on their current job and few years of U.S. work experience;[11]
- "[T]he heavy representation of Hispanics in seasonal and cyclically sensitive occupations and industries."[12]

All of these factors apply to the Latino population in the District of Columbia. In particular, the District's Latinos have been disproportionally employed in the construction industry, which was severely affected by the recession.[13] Therefore, the recent economic recession is likely to have considerably diminished the employment opportunities of the District's Latinos, aggravated the economic pressures on Hispanic families, and increased their needs for publicly and privately provided social services.

In addition to these problems, Latinos have found a public education system ill-prepared to meet the needs of an influx of limited-English-proficient students and a metropolitan police department perceived by many in the Hispanic community as insensitive, and even hostile, to their needs and culture. For those immigrants who entered the United States without documentation—and even for some of those later covered by a "Temporary Protected Status"—there have been other problems, discussed more fully in chapter 2 of this report.

District Government Response to the Needs of Latino Residents

As a poor and predominantly immigrant population, Latinos in the District of Columbia face language and cultural barriers that impede their access to District services. The District government's efforts to overcome these barriers have been inadequate. Furthermore, the District government has failed to take a leadership role in combatting discrimination against Latinos in the provision of services and even failed to implement affirmative action employment plans for its own personnel.[14]

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[7] District of Columbia, Office of the Mayor, *Who's Poor in the District of Columbia*, September 1988, p. 3.

[8] *See*, for instance, Timothy Ready, Ph.D., "School and the Passage of Refugee Youth from Adolescence to Adulthood," in Frederick L. Ahearn, Jr. and Jean L. Athey, *Refugee Children: Theory, Research, and Services* (Baltimore: Johns Hopkins University Press, 1991).

[9] Gregory DeFreitas, *Inequality at Work: Hispanics in the U.S. Labor Force* (New York: Oxford University Press, 1991), table 4.1, p. 115.

[10] Ibid., p. 113.

[11] Ibid.

[12] Ibid.

[13] U.S. Commission on Civil Rights, Mount Pleasant Staff Report, January 1992, p. 21.

Latinos have virtually no voice in the District government. Latinos are almost nonexistent among the District's elected and appointed officials. There are no Hispanic representatives on the District Council or on the School Board. In 1991 there were only 2 Hispanic members of the Advisory Neighborhood Commissions, out of a total of 323 members.[15] A third Hispanic was appointed in June 1992.[16] Slightly more than 100 Latinos serve as mayor-appointed members on the District's 49 boards and commissions, out of a total membership of 1,800.[17]

Latinos' lack of political representation in the District stems in part from the ineligibility of many District Latinos to vote because they lack U.S. citizenship, with the result that only 1 percent (3,000) of all registered voters in the District are Latinos, even though Latinos make up at least 5 percent of the population.[18] Although at least one Washington area jurisdiction has taken steps to allow noncitizen residents to vote in city elections, Mayor Kelly has not supported such a measure for the District of Columbia.[19]

With this lack of political representation, Latinos' voices are likely to go unheard in the District government. It was in part to provide Latinos with such a voice that in 1976 the D.C. Council established an Office on Latino Affairs (OLA) and a Commission on Latino Community Development and required District agencies to hire Spanish program coordinators. The purpose of these entities is to "ensure that a full range of health, education, employment, and social services shall be available to the Latino community in the District of Columbia."[20]

Despite this legislation, the District government has largely failed in this endeavor. Almost 10 years after the enactment of this legislation, District Latinos maintained in their 1985 *Latino Community Agenda* that there were "long-standing systemic imbalances" in the District's provision of services to its Latino community and that District government was guilty of "unheeded recommendations, ignored issues, and the absence of a comprehensive . . . response" that "allowed problems to reach critical dimensions."[21] Six years later, after the Mount Pleasant disturbance, the Latino Civil Rights Task Force stated that "[a]lthough some short term, high-visibility programs were implemented, the D.C. government failed to adopt the principal policy recommendations cited by Latino community leaders as necessary to correct the issues of inequity, abuse, and isolation."[22]

Despite their noble purpose, the Office on Latino Affairs and the Commission on Latino Community Development have had limited effectiveness in recent years, and the Spanish program coordinators have never lived up to their promise.[23]

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[14] *See* chap. 6 for a discussion of Latinos' employment in District government.

[15] District of Columbia, Office of Policy and Program Evaluation, *Indices: A Statistical Index to District of Columbia Services*, vol. VIII (Washington, D.C., August 1991) p. 234 (hereafter *Indices 1991*).

[16] The number of Latinos on the Advisory Neighborhood Commissions is expected to increase in 1993 following redistricting that has created a Latino majority in one district and several districts with a plurality of Latino residents. Shaun Sutner, "ANC Contests Have a New Look: Elections Feature More Latino Candidates, Realigned Districts," *Washington Post*, Oct. 15, 1992.

[17] Russell Carpenter, D.C. Office of Boards and Commissions, telephone interview, July 24, 1992.

[18] Nell Henderson, "Power at Ballot Box Eludes D.C. Hispanics: Task Force Attempts to Bridge the Gap," *Washington Post*, May 5, 1992.

[19] Ibid.

[20] D.C. Code Ann. § 1-2301 (1981).

[21] Ad Hoc Coalition for a Latino Community Agenda, *Latino Community Agenda*, June 7, 1985, p. iii.

[22] *Latino Blueprint*, p. 3.

[23] *See* chap. 6 for a discus f the Spanish program coordinators.

OLA and the Commission on Latino Community Development

OLA is located within the Executive Office of the Mayor and is headed by an Executive Director. Although OLA's Executive Director once reported directly to the Mayor,[24] she now reports to the Secretary of the District of Columbia.[25] OLA's primary mission is to "promote the welfare of the Latino community."[26] It serves as an advocate for the Latino community within the District government, advises the Mayor and the Council on ways to improve services to the Latino community, provides technical assistance to community organizations, translates District forms and brochures into Spanish, and until recently has cosponsored the annual Back-to-School Health Fair to promote health awareness and hygiene in the Latino community.[27] As part of its efforts to inform the Latino community about the services available to it, OLA developed a public affairs program that is aired on Channel 48, a local Spanish-language channel.[28] Although OLA is not a direct service agency, it does try to help persons in need of services to find their way through the system.[29]

The Commission on Latino Community Development was designed as a body of citizens who "advise the Mayor, the Director of the Office on Latino Affairs, the Council, and the public concerning the views and needs of the Latino Community in the District of Columbia."[30] The Commission consists of 15 voting members, appointed by the Mayor and subject to Council approval, and 8 ex-officio nonvoting members.[31] The voting members serve 3-year terms and are chosen to be representative of "established public, nonprofit and community organizations and agencies concerned with the Latino community and members of the general public who have given evidence of particular dedication to, and knowledge of, the needs of the Latino community."[32] The Commission serves as an advocate for the District's Latino community, conducts public hearings and other forums to determine the views of the community, submits to the Mayor an annual report on the needs of the Latino community, and develops policy for and reviews the activities of OLA.[33]

The Commission has the statutory responsibility of developing a list of three names from which the Mayor must choose the Director of OLA.[34] The Director of OLA is the only cabinet-level position for which the Mayor must choose from nominations submitted by an advisory commission.[35]

When Mayor Sharon Pratt Dixon (now Kelly) took office in January 1991, OLA had not had a permanent director since the previous April, and OLA was under the direction of Interim Director Rita Soler Ossolinski. The appointment of a permanent director continued to be stalled because of an impasse between Mayor Dixon and the Commission on Latino Community Development, which had been appointed by former Mayor Marion Barry and also had several vacancies. The Commission made three nominations for OLA director, but the Mayor refused to appoint any of them.[36] In the wake of the Mount Pleasant disturbance, Mayor Dixon appointed Mara Lopez as acting director to replace Ossolinski, who had resigned effective May 17, 1991. At the time of the Lopez appointment, a spokesman for the Mayor reportedly predicted that a permanent director would be named within a month.[37]

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[24] Debra Delgado, Chairperson, Commission on Latino Community Development, testimony, *Hearing Transcript*, vol. 3, p. 247.

[25] Mara Lopez, Acting Director, Office on Latino Affairs, testimony, *Hearing Transcript*, vol. 3, p. 246.

[26] D.C. Code Ann. § 1-2302 (1981).

[27] District of Columbia, "The Mayor's Office on Latino Affairs" (brochure describing OLA's mission and functions.) According to then Acting Director of OLA, the health fair has recently been discontinued. Mara Lopez, interview, Washington, D.C., Oct. 23, 1991.

[28] Lopez Testimony, *Hearing Transcript*, vol. 3, p. 237.

[29] Ibid., p. 238.

[30] D.C. Code Ann. § 1-2321 (1981).

[31] *Id.* § 1-2322. The ex-officio nonvoting members are the heads of the following city agencies: the Departments of Human Services, Housing and Community Development, Recreation, Transportation, Manpower, and Licenses, Investigation and Inspections; the District of Columbia Public Library; and the Metropolitan Police Department.

[32] *Id.* § 1-2323.

[33] *Id.* § 1-2330.

[34] *Id.* § 1-2330.

[35] Carlos Sanchez, "Dixon Picks Acting Latino Affairs Chief: D.C. Housing Aide to Serve a Month," ***Washington Post***, May 25, 1991 (hereafter "Dixon Picks Acting Chief").

It was not until a year after the disturbance, however, on April 30, 1992, that a permanent OLA director, Carmen Ramirez, was named.[38] The impasse between the Mayor and the Commission was finally resolved through the appointment of new Commission members by the Mayor and their nomination of a candidate acceptable to the Mayor.[39]

Therefore, OLA, which might have played a vital role in helping the District to prevent and to respond to the Mount Pleasant disturbance, was without permanent leadership and the Commission was not at full strength during a crucial moment in the history of the District's relationship with its Hispanic community. Moreover, OLA's effectiveness as a District agency charged with promoting Latino interests within the District government may have been further impaired by budget cuts the Mayor imposed as part of a District-wide cost-cutting initiative.[40]

Testimony at the Mount Pleasant hearing brought out several areas in which the effectiveness of OLA and the Commission on Latino Affairs could be improved, some with little expenditure of resources. First, until recently, the Director of OLA did not meet regularly with the Spanish Program Coordinators of other District agencies, as required by law.[41] Without regular meetings with other District agencies, OLA officials had no institutional way of addressing issues of concern to the District's Latino community.

Second, although OLA is charged with translating District government forms and documents into Spanish, it generally does not do so upon its own initiative. Instead it waits for requests from other District agencies. OLA gets many such requests, and it currently has a 6-week backlog. OLA has not made an effort to audit all District forms and determine for itself which forms should be translated into Spanish.[42] Therefore, if other District agencies fail to request OLA's translation services, OLA does not take steps, on its own, to ensure that District forms are translated.

Third, the Chairperson of the Commission on Latino Community Development testified that there had been a lack of coordination and cooperation between OLA and that Commission which had prevented the two groups from working together effectively to promote the interests of the District's Latino community.[43]

Mayor Kelly's Response to the *Latino Blueprint*

In October 1991, the Latino Civil Rights Task Force presented to the Mayor its agenda for action, the *Latino Blueprint*, which contained detailed recommendations for change.[44] Six months later, after the Commission's Mount Pleasant hearing and on the eve of the anniversary of the Mount Pleasant incident, Mayor Kelly met with Latino community leaders to "present certain specific initiatives and discuss the District government's response to the *[Latino] Blueprint*."[45] The Mayor's response included a list of specific actions or plans by District agencies to address concerns raised in the *Latino Blueprint*. She also noted that she had written to Attorney General William P. Barr expressing her support for the extension of Temporary Protected Status for Salvadoran immigrants and issued a Mayor's order clarifying which District services were available to noncitizens.[46]

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[36] Carlos Sanchez, "Rift Stalls Search for Hispanic Liaison: Advisory Board Says Dixon Snubbed Its 3 Nominees for D.C. Post," *Washington Post*, Apr. 12, 1991.

[37] "Dixon Picks Acting Chief."

[38] Saundra Torry, "Hispanics Get Pledge of Action: Kelly Program Marks Anniversary of Unrest," *Washington Post*, Apr. 30, 1992.

[39] Carlos Sanchez, "Council Seen Confirming Kelly's Hispanics Panel," *Washington Post*, Jan. 30, 1992.

[40] Vincent McCraw and Pamela McClintock, "A Cautious Dixon Responds to Crisis," *Washington Times*, May 7, 1991.

[41] This issue is more fully developed in chap. 6 below.

[42] Lopez Testimony, *Hearing Transcript*, vol. 3, p. 233-36.

[43] Delgado Testimony, *Hearing Transcript*, vol. 3, p. 243-44.

[44] *Latino Blueprint*.

Finally, the Mayor issued another Mayor's order establishing a Mayor's Multicultural Services Delivery Initiative[47] "to address linguistic and multicultural issues in program development, hiring, training, public information, needs assessments and evaluations of programs and personnel."[48] The stated purpose of the Multicultural Initiative is to guide District government agencies in their formulation, planning, and implementation of policies and their allocation of resources; to "ensure that District government agencies . . . become more responsive to the needs of the District's increasingly culturally diverse population . . . [and] that government services and benefits are delivered in a manner that eliminates barriers"[49] confronting limited-English-proficient residents; and to ensure that representatives of cultural minority groups are included in efforts to obtain community input into the District's policy and program development. The Multicultural Initiative promises enhanced data collection to help in evaluating the needs of all District population groups, the inclusion of bilingual language skills as a ranking factor or a selective placement factor in appropriate positions, posting bilingual signage in service delivery centers, providing cultural sensitivity training to District managers and service delivery personnel, and conducting improved community outreach programs.[50]

The Mayor's response to the Latino community's concerns did not come until a full year after the Mount Pleasant disturbance; and when it came, it was largely a compilation of individual initiatives undertaken or planned by District agencies rather than a comprehensive approach to addressing the needs and concerns of the District's Latino community. District Latino leaders characterized it as a "good faith attempt to deal with the concerns of the Latino community," but one that seemed "hastily prepared" and that could have been implemented almost immediately after the Mount Pleasant disturbance rather than being delayed by a year.[51] Although the Mayor's response included a Multicultural Services Delivery Initiative that attempts to address Latinos' problems broadly and contains laudable policy goals, the Mayor gave little indication as to how or when the initiative would be implemented and how agencies would be held accountable for its implementation. Furthermore, the initiative did not have accompanying funds.

Demographic and Socioeconomic Characteristics of the District

Although the District of Columbia is a unique political entity, it was noted at the outset of the Mount Pleasant Hearing that "it is not so unique" that the kind of protest that erupted on its streets in May of 1991 could not also occur in any of some eight or nine other localities with similar statistical profiles.[52] Although neither a city (in a strictly technical sense) nor a State, the District of Columbia bears many of the responsibilities of both, while enjoying the full

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[45] Vanessa Ruiz, Deputy Corporation Counsel, Office of the Corporation Counsel, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, re The District of Columbia Government's Response to the Blueprint for Action, May 1, 1992 (hereafter Ruiz Letter).

[46] District of Columbia Mayor's Order 92-49. This order is discussed more fully in chap. 9.

[47] District of Columbia Mayor's Order 92-50.

[48] Ruiz Letter.

[49] District of Columbia Mayor's Order 92-50.

[50] *Id.*

[51] Nell Henderson, "Kelly's Hispanic Plans Faulted as Not Enough," *Washington Post*, May 1, 1992, quoting Pedro Aviles, Chairman, D.C. Latino Civil Rights Task Force."

[52] Arthur A. Fletcher, Chairman, U.S. Commission on Civil Rights, remarks, *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, vol. 1, p. 25.

benefits of neither status. In social and economic terms, however, the District, like many of its urban counterparts, is experiencing painful and divisive stress in an era of rapidly changing demographics and lingering economic recession.

Although the District of Columbia's population has long been predominantly minority, it has been transformed in recent years by a rapid influx of immigrants, particularly from El Salvador. The District's Latino population, historically small and not very visible, grew considerably during the 1980s, by official census statistics, almost doubling from 17,679 to 32,710. According to the 1990 census, the District's population is about 65 percent black, 27 percent white, 5 percent Hispanic (a figure vehemently disputed by Latinos as representing perhaps a third of their actual presence), and 2 percent Asian and others.[53]

Surrounded by one of the richest metropolitan areas in the country, Washington, D.C., has many residents suffering from economic deprivation. In the mid-1980s, roughly one-half of the households in the District of Columbia had annual earnings below $20,000 and one-fifth below $10,000.[54] In 1990, 30 percent of District residents received financial assistance from supplemental assistance programs, such as medicaid, food stamps, or aid to families with dependent children, through the District's Department of Human Services. Ninety-two percent of those enrolled received assistance from more than one program.[55]

Economic well-being in the District is generally reflective of race, national origin, and residence. Some areas of the District are very well off, while others have extremely high rates of poverty. For instance, Ward 3, a largely white ward, had a median household income as high as $37,000, almost twice the median incomes ($18,200 and $17,000, respectively) of Wards 7 and 8, which are over 90 percent black. Ward 1, which has the highest concentration of Hispanics, had a median household income of $18,900.[56]

Similarly, Ward 3 had the lowest unemployment rate of the eight wards, and its household poverty rate was 3 percent, well below the District average of 14 percent. Even though 1986 was by no means a recessionary year, the overwhelmingly black Wards 7 and 8 had unemployment rates of 8.8 percent and 10.8 percent, respectively; and over 20 percent of households in these wards lived below the poverty level. Ward 1 had an unemployment rate of 7.3 percent and a household poverty rate of 18 percent.[57]

A recent study of the District of Columbia found that the poor became a larger percentage of District residents during the 1980s, with the number of low-income District residents increasing and the number of high-income residents remaining roughly constant. As a result, the population needing services has been growing over recent years, while the income of District residents has been falling in real terms.[58]

The Fiscal Dilemma

District Mayor Sharon Pratt Kelly told the Commission that the District's ability to provide for the basic needs of its residents has been hampered by a financial crisis brought on by both the recession and Federal cutbacks in funding to the District, problems affecting cities across the Nation. Compounding this challenge, she added, has been a recent influx of immigrants in need of social services, and the absence of any new Federal funds or programs to provide services—in education, job opportunities, or social services.[59]

The financial crisis facing the District was the impetus in 1989 for the appointment of an independent Commission on Budget and Financial Priorities (Rivlin Commission, popularly named after its chairperson, Alice M. Rivlin) to develop a fiscal strategy for 1992 through 1996.[60] The Rivlin Commission's report called upon both the District and Federal Governments to take necessary steps to meet the crisis.[61]

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[53] *See* table 1.1.

[54] Eunice S. Grier, *The Changing Population of the District of Columbia* (Washington, D.C.: Greater Washington Research Center, 1990), pp. 29-30 (hereafter *Changing Population*).

[55] *Indices 1991*, pp. 223-24.

[56] See table 1.2.

[57] Ibid.

[58] *Changing Population*, pp. 34-35.

[59] Sharon Pratt Kelly, Mayor, District of Columbia, remarks, *Hearing Transcript*, vol. 1, pp. 18-46.

The Rivlin Commission concluded that the rapid growth in the size of the District government work force, particularly in public safety and human services, during the 1980s contributed to the current mismatch of spending and revenues. To overcome the financial crisis, the Rivlin Commission recommended, among other things, that the District accomplish budgetary savings by managing spending more efficiently, eliminating unnecessary staff, delivering services at lower cost, and redirecting resources to the highest priorities.[62]

Although the Rivlin Commission found that District government could accomplish significant savings on its own, it also concluded that the Federal Government had failed to contribute its fair share to the District's budget and recommended that the Federal Government contribute more toward District expenses, either by eliminating certain restrictions on the District's taxing power or by increasing the Federal payment—the amount awarded to the District annually to compensate for the Federal presence in the District. It recommended a payment level equivalent to 30 percent of the District's own source revenues, the percentage when Home Rule began in 1973. (The Federal payment was increased dramatically in 1992, from $430.5 million to $630.5 million, or 24 percent of the District's own source revenues.) The Rivlin Commission recommended further that the District should raise additional revenues from increased fees and should broaden its tax base only as a last resort.[63]

The District's ability to raise more revenue from its residents is impeded by one of the highest tax burdens in the country. Its tax burden per $1,000 of personal income ranks second among States (after Alaska). The District imposes the highest tax burden on families with an income of $100,000 and the third highest on families with an income of $25,000, in comparison to six Washington-area jurisdictions.[64] Another potential source of revenue, a commuter tax on the thousands of suburbanites who work in the District and utilize many of its services and facilities, is prohibited by the District's charter and vigorously opposed by the congressional representatives of those suburban communities.[65] The District itself, with nearly three-quarters of a million residents, most of them racial and ethnic minorities, has no voting representation in the Congress.[66]

In testimony before the Congress, Mayor Kelly observed:

> [The District's] citizens have lived too long without the same rights that each and every other citizen in America enjoys. Our anomalous status as the capital of this democratic nation has denied our citizens their full rights. This denial comes in many forms: taxation without representation; the imposition of fiscal constraints unique to the District that delimit our ability to prosper; and a constant need

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[60] The 44 members of the Commission on Budget and Financial Priorities of the District of Columbia included educators, labor representatives, community and religious leaders, and members of the business and professional community who donated their time, energy, and talents to the task.

[61] Commission on Budget and Financial Priorities of the District of Columbia, *Financing the Nation's Capital* (Washington, D.C.: November 1990), pp. iii-xv.

[62] Ibid, p. iv.

[63] Ibid, pp. x-xii.

[64] KPMG Peat Marwick, "The District of Columbia's Tax System: A Background Paper on Selected Issues," submitted to the District of Columbia Government Commission on Budget and Financial Priorities, June 7, 1990, pp. 25-29.

[65] Sixty percent of all income earned in the District is earned by workers who live outside the city. These suburban commuters benefit from the office space and jobs in the District and from construction on major city streets, but pay nothing for them. Although more than 50 cities with populations of over 50,000 impose some tax on the income of nonresidents, Federal law prohibits the District from doing so. In 1991 the tax revenue lost because of this Federal restriction was estimated by the District at $1,347.1 million. *Indices 1991*, p. 170.

[66] Residents of the District of Columbia have limited representation in the Federal Government. Although eligible to participate in Presidential elections, they have little representation in Congress. Like U.S. territories, the District is represented by a nonvoting delegate in the House of Representatives—who under existing House rules has the right to hold committee office and vote in committee, but not on the House floor—and has no representation in the Senate. *See* U.S. Library of Congress, Congressional Research Service, "Shadow Representatives in Congress: History and Current Developments," 1991, pp. 3-4.

to seek Congressional approval for even the most mundane city business.[67]

Two bills were introduced in the last Congress, each of which would dramatically alter the status of the District—one by making it a State, the other by returning most of it to the State of Maryland.

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[67] Sharon Pratt Kelly, Mayor, District of Columbia, testimony before the U.S. House of Representatives, Committee on the District of Columbia, November 1991.

Chapter 2. Immigration From El Salvador

The majority of Latinos in the District are either undocumented immigrants, prohibited by law from working and residing in the United States, or Salvadorans who were granted "Temporary Protected Status" and are now in a state of political limbo under a Federal government policy known as "Deferred Enforced Deportation." Uncertain or undocumented immigration status presents numerous problems for Latinos in the District of Columbia and makes them particularly vulnerable to discrimination and other forms of abuse in most areas of their lives.

Immigration to the United States from El Salvador began in large numbers in 1980.[1] Most experts agree that civil strife in El Salvador was a major reason for the upsurge in Salvadoran emigration throughout the 1980s. A 1988 study from the Center of Immigration Policy and Refugee Assistance of Georgetown University concluded that the fear of political violence was a major factor motivating their departure from their home country.[2] This study concluded that "over three-fourths of the [Salvadoran] emigrants arrived in the United States after 1979, once the political crisis and repression [in El Salvador] had become most intense."[3] Moreover, this study determined that locales in El Salvador that "were affected by political crisis . . . [were] overrepresented in the total emigrant stream."[4]

If an individual entered the United States during the civil war in El Salvador, this is not sufficient, in itself, to protect the person from deportation.[5] The United States immigration laws safeguard an individual whose life or freedom would be threatened upon deportation or who can prove a well-founded fear of persecution, based on one of five factors: political opinion, membership in a particular social group, race, religion, or nationality.[6] Protection under these laws has generally required an individualized threat or well-founded fear of persecution to the person, as opposed to a general threat to citizens or broad class of persons.

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[1] *See* D.C. Latino Civil Rights Task Force, *Immigration Law: A Civil Rights Issue: The Human Impact of Immigration and Refugee law on the District of Columbia's Latino Population*, a report prepared for presentation to the U.S. Commission on Civil Rights, pp. 58-59 (hereafter *Latino Task Force Immigration Report*).

[2] Segundo Montes Mozo and Juan Jose Garcia Vasquez, "Salvadoran Migration to the United States: An Exploratory Study" (Hemispheric Migration Project, Center for Immigration Policy and Refugee Assistance, Georgetown University, 1988) (hereafter "Salvadoran Migration").

[3] "Salvadoran Migration," p. 9.

[4] Ibid., p. 11.

[5] *E.g.*, Zepeda-Melendez v. INS, 741 F.2d 285, 289-90 (9th Cir. 1984) ("generalized allegations of persecution resulting from the political climate of a nation" are insufficient for refugee status).

[6] An individual has two statutory ways to seek relief from possible deportation. The first is the withholding of deportation, which requires that one demonstrate by a preponderance of the evidence that his or her life or freedom would be threatened on account of membership in a particular social group, political opinion, race, religion, or nationality. The second avenue of relief is the granting of asylum based on a well-founded fear of persecution based on one of the five types of discrimination listed previously. By comparison, granting of asylum is discretionary.

Upon a finding of a threat to life or freedom, withholding of deportation must be granted. A "well-founded fear" has both subjective and objective components. Under the subjective component, a court determines whether the fear is genuine. The objective component is satisfied if there is credible, direct, and specific evidence that would support a reasonable fear of persecution. *See* Abudu v. INS, 802 F.2d 1096 (1986); Sanchez-Trujillo v. INS, 801 F.2d 1571 (9th Cir. 1986).

In addition to the relief granted to a potential deportee, several statutory and nonstatutory bases for protection under the immigration laws exist. One statutory grant, temporary protected status, and one administrative relief, deferred enforced departure, are discussed later. Other methods, including extended voluntary departure and parole are outside the scope of this discussion. For a detailed discussion on immigration, *see* Gordon & Mailman, Immigration Law and Procedure (1991 rev. ed.) (hereafter Gordon & Mailman).

Discriminatory Application of Refugee Law

The Refugee Act of 1980 (Refugee Act) was a watershed for refugee law.[7] Among the Refugee Act's purposes was to establish a comprehensive law on refugees and to create a nonideological process for resolving the eligibility of asylum applicants. The nonideological resolution process was confirmed in a consent decree in *American Baptist Churches v. Thornburgh* (ABC),[8] which was accepted by the Department of Justice. The consent decree provides that the application of the laws pertaining to asylum application is made without reference to the political relationship between the foreign country and the United States, or to the applicant's views:

> [T]he fact that an individual is from a country whose government the United States supports or with which it has favorable relations is not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution;
>
> [W]hether or not the United States Government agrees with the political or ideological beliefs of the individual is not relevant to the determination of whether an applicant has a well-founded fear of persecution . . . .[9]

Many, however, have argued that Salvadorans have been discriminated against in the application of the law, even when there has been either a well-founded fear of persecution or a threat to life or freedom. The *Latino Task Force Immigration Report* concluded that U.S. foreign policy was a determinant in the decisions involving refugees.[10] According to Susan Benda, an attorney with the law firm of Arnold and Porter and one of the authors of the *Latino Task Force Immigration Report*, Salvadorans are "discriminatorily denied asylum and refugee status under the Refugee Act."[11] According to *Refugee Reports*, a news service of the U.S. Committee for Refugees, during the period from June 1983 to March 1991, 1,365 Salvadoran asylum applications were granted while 56,712 were denied, for a 2.8 percent approval rate.[12] For asylum applications during this period, the approval rate for all applications was 23.6 percent. For applications from the USSR, 74.5 percent were approved, while 69.0 percent of Republic of China applications were accepted. For selected other nations, the approval rate was 62.6 percent for Romania, 61.0 percent Iran, 49.1 percent Somalia, 47.4 percent Ethiopia, 43.6 percent Syria, 41.96 percent Czechoslovakia, 40.1 percent South Africa, 34.5 percent Vietnam, 24.8 percent Nicaragua, 18.5 percent Cuba, 10.5 percent Yugoslavia, 2.1 percent Guatemala, and 1.8 percent Haiti.[13]

A recent far-reaching indication of problems with the adjudicative process for determining the eligibility for asylum of Salvadorans, as well as Guatemalans, is suggested by *American Baptist Churches*. The plaintiffs alleged discrimination in the Government's denial of asylum. The Department of Justice, in the resulting consent decree, agreed to rehear all cases in which Salvadorans and Guatemalans had been denied asylum.[14]

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[7] Pub. L. 96-212, 94 Stat. 127 (1980). At its enactment, the Refugee Act was called the "most comprehensive United States law ever enacted concerning refugee admissions and resettlement." Anker & Posner, *The Forty Year Crises: A Legislative History of the Refugee Act of 1980*, 19 San Diego L. Rev. 9, 11 (1981). For a general discussion of the significant changes wrought by the Refugee Act, see Gordon & Mailman, particularly at § 33.01[3].

[8] 760 F. Supp. 796 (N.D.Cal. 1991).

[9] *Id.* at 799.

[10] *See Latino Task Force Immigration Report*, p. 44. In an earlier criticism of the United States' use of the Refugee Act, a commenter indicated: "Ideology also continues to dominate asylum decision making, translating into ready asylum grants for applicants who flee from Communist-dominated regimes, and into far less generous grants to those who flee regimes with which the United States has good relations, irrespective of their human rights records. Statistics provided by the INS for fiscal year 1983 support this conclusion. For example, seventy-eight percent of the Russian, sixty-four percent of the Ethiopian, fifty-three percent of the Afghan, and forty-four percent of the Romanian cases decided received political asylum, all involving persons fleeing Communist-dominated regimes. On the other hand, asylum was granted in less than eleven percent of the Philippine, twelve percent of the Pakistani, two percent of the Haitian, two percent of the Guatemalan and three percent of the Salvadoran cases." Helton, *Political Asylum under the 1980 Refugee Act: An Unfulfilled Promise*, 17 Univ. of Mich. L. Rev. 243, 253 (1984).

[11] Susan Benda, attorney, testimony, *Hearing Transcript*, vol. 1, p. 97.

[12] "Refugees Admitted to the United States by Nationality: FY 80-91," *Refugee Reports*, Dec. 30, 1991, pp. 10-11.

[13] "Asylum Cases Filed with INS District Directors Approved and Denied, by Selected Nationalities," *Refugee Reports*, Dec. 10, 1991, p. 12.

To further the protection accorded applicants for asylum, the INS revised its regulations for adjudicating asylum requests during the litigation of *American Baptist Churches*. These regulations, effective October 1, 1990, indicated that underlying policy "reflects two basic guiding principles: a fundamental belief that the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process; and a recognition of the essential need for an orderly and fair system for the adjudication of asylum claims."[15]

Barriers to Requesting Asylum

Despite the availability of the process for seeking asylum, few Salvadorans have applied for asylum. Boris Canjura, a member of the Salvadoran Refugee Committee and national coordinator of a nationwide organization of Salvadoran refugees, cited several reasons why Salvadorans have not applied for asylum, including the mistaken belief that an applicant for asylum will never be able to return to his or her own country.[16] Another reason he cited for not applying for asylum is that only a "small percentage [of Salvadorans] actually receive political asylum."[17] With the approval rate for Salvadorans so low, "a Salvadoran would rather not risk . . . affirmatively applying for political asylum for fear that . . . once asylum was denied, the [INS] would deport them."[18] Explaining reservations about the INS; Lori Kaplan, executive director of the Latin American Youth Center in Adams Morgan, expanded on the apprehensions of Latinos:

> In general there is a feeling that these refugees are fearful of INS and thus are reluctant to pursue their claims. I think particularly for Latino young people, the INS has a reputation of not being sensitive to their needs and is viewed as just looking for people to deport.[19]

Temporary Permission to Stay in the United States

Although the Attorney General has long possessed authority to grant temporary relief from deportation from the United States to groups, it was not until the Immigration Act of 1990 that the authority for such relief was codified with the creation of Temporary Protected Status (TPS).[20] Upon a finding of an ongoing armed conflict which would pose a serious threat, an environmental disaster producing a substantial, temporary disruption in living, or extraordinary and temporary conditions that would prevent the safe return of deported individuals, the Attorney General, in his discretion, may allow foreign nationals, including undocumented persons, to stay in the United States. TPS may be granted for 6 to 18 months and may be extended upon a further finding of the Attorney General.[21] The absence of any attempt to protect Salvadorans over the past decade prompted Congress to pass a special 18-month provision that permitted Salvadorans to live and work in the United States until June 30, 1992.[22]

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[14] 760 F. Supp. 796 (N.D.Cal. 1991). To qualify under the consent decree, Salvadorans had to be in the United States by September 19, 1990, while Guatemalans had to have entered the country by October 1, 1990.

[15] 55 Fed. Reg. 30,675 (1990).

[16] *Latino Task Force Immigration Report*, app. A-30 (sworn statement of Mr. Canjura). According to Boris Canjura, many Latinos "do not understand the basics of how the U.S. legal/government systems work. We all come to the United States . . . very naive." Ibid., app. A-29.

[17] Ibid., app. A-29.

[18] Ibid.

[19] Ibid., app. A-35 (sworn statement of Ms. Kaplan).

[20] 8 U.S.C.A. § 1254a (West Supp. 1991).

[21] *Id.* § 1254a(b)(2),(3).
Recent actions taken by the Attorney General have included the designation of Somalians for TPS (56 Fed. Reg. 46804-05 (1991)), termination of TPS status for nationals of Kuwait, (57 Fed. Reg. 2930 (1992)), and the extension of TPS to Liberian nationals (57 Fed. Reg. 2932 (1992)).

[22] The amendment as originally proposed by Rep. Joseph Moakley directed that nationals from Lebanon, Liberia, and Kuwait as well as

In May 1992, with the expiration date for TPS looming, the President announced that Salvadorans' authorization to remain in the United States would be extended for 12 months.[23] This 12-month authorization was not an extension of TPS. The extension of TPS might have triggered additional safeguards for Salvadorans, presumably including periodic Attorney General review. The choice for the extension of temporary authorization (as opposed to TPS) was an administrative process known as Deferred Enforced Deportation (DED).[24]

The 12-month DED ensured that Salvadorans were not forced to make a choice between possible persecution in their native land or illegal status in the United States. The DED also provides additional time to allow the current peace accord in El Salvador to be implemented. The major participants in Salvadoran politics supported an extension of the United States policy of permitting Salvadorans to remain temporarily in the United States.[25]

Reluctance to Return to El Salvador

At the time of the hearing, a major concern of Salvadorans in the District of Columbia was the slated expiration of the Salvadoran TPS. More than 200,000 Salvadorans protected under TPS would have been required to return to El Salvador at a potentially premature and dangerous time. While DED provides a further 12 months of certainty, the recognition that the status is temporary instills a concern among Salvadorans about their eventual fate.

Statements received by this Commission suggest that many Salvadorans are not assuaged by the improving conditions in their native country and would prefer staying in the United States, even though a decision to remain in the United States would mean violating immigration law and living under the extreme conditions of a person in hiding. Concern was expressed that individual fear of persecution would result in many Salvadorans ignoring expiration of temporary status (TPS at the time of the Commission hearing and DED now). Instead, they would change residences and go "underground" in an unauthorized status. One sworn statement, for example, notes:

> [Salvadorans] may lose their documented status, . . . but they will learn to survive in the U.S. without documents. They will just change their address and change their jobs. If they do not want to go home, they cannot be forced to go back.[26]

Lori Kaplan, executive director of the Latin American Youth Center, noted that Salvadorans would merely revert to their former existence as undocumented persons:

> [W]hen TPS expires many Salvadorans will simply go back to their undocumented status and begin the very difficult existence that they were dealing with before TPS. They will not go home as a result of the expiration of TPS.[27]

Yvonne Vega, director of Ayuda, Inc., a legal clinic in Adams Morgan, noted:

> When TPS expires, Salvadorans are not going anywhere. I doubt that they will go home. They will stay here. Despite their mistreatment here, they think it is safe. . . . They still do not understand what is happening in El Salvador. Reports from newspapers and friends and family in El Salvador are that even though there is a Peace Accord signed, shooting still continues . . ., and they fear going back home. The reality is that until their whole country is restructured in terms of economy and safety you are not going to have people that are going to return home. However, the other reality is that our clients generally hope to eventually return home.[28]

El Salvador be granted TPS. H. Rep. No. 253, 101st Cong., 2nd Sess. 4 (1990).
Salvadorans were eligible for this special TPS only if they (1) have been continuously physically present in the United States since September 19, 1990; (2) registered for TPS by October 31, 1991; and (3) are otherwise admissible as immigrants under the Immigration and Nationality Act of 1952, as amended. 8 U.S.C.A. § 1254a note (West Supp. 1991).

[23] George Bush, President, letter to Alfredo Cristiani, President, El Salvador, May 4, 1992.

[24] *See* Employment Authorization Extended for Salvadorans, INS Announces, *U.S. Newswire* (June 15, 1992).

[25] *Cf.* Rep. Joseph Moakley, letter to William P. Barr, U.S. Attorney General, Jan. 9, 1972.

[26] *Latino Task Force Immigration Report*, app. A-32 (sworn statement of Mr. Canjura).

[27] Ibid., app. A-36 (sworn statement of Ms. Kaplan).

TPS and DED have been a mixed blessing for Salvadorans in the United States. The most obvious benefit is that each permits individuals to stay within the United States temporarily and not face the day-to-day anxiety of being apprehended by the INS for possible deportation. Testimony and sworn statements demonstrated a clear concern by undocumented Salvadorans of being deported. For those who chose to register under the temporary protection, the fear of deportation was relieved, at least during the period of protection.

With the documented status of TPS and DED comes a confidence that allows the individual to pursue legal claims. In the words of Pedro Aviles, executive director of the Central American Refugee Center (CARECEN):

> [N]ow that many of our clients have obtained TPS, more Salvadorans are coming forward with problems about housing and complaints about discrimination. We have seen a small increase in the number of Salvadorans who are speaking out about wage and hour problems. This is most likely the result of their having some type of documentation and thereby feeling more secure.[29]

Mr. Aviles continued: "TPS gave CARECEN clients the opportunity to stop living in a clandestine fashion. It gave them the opportunity to stop living as second-class citizens."[30]

Even with temporary protection, however, many individuals had problems securing employment at a reasonable salary. Mr. Aviles further noted:

> It is . . . more difficult to find work with temporary protected status than it is with permanent status. This is because employers know that at a certain time, the employee's TPS permit will expire and the employer will fire this person, bring in somebody else, and train the new person. On the other hand, if an employer wants to continue employing this individual, the employer is apparently concerned that he/she does it at the risk of violating employer sanctions.[31]

Effects of Immigration Status on District Latinos

Ms. Kaplan observed that "[w]hen a Latino is undocumented, their immigration status truly contributes to a much lower and poorer quality of life. . . . Undocumented status has created a whole disenfranchised sector of our community . . . ."[32] The American Civil Liberties Union expressed this dilemma and its ramifications for both U.S. citizens and undocumented persons:

> [T]he existence of an "underclass" in the U.S. is extremely prejudicial to the interests of the U.S. population. Social order and occupational, medical or housing standards suffer from the presence of an intimidable and exploitable population in our midst. It is axiomatic in discussions of U.S. immigration policy that persons illegally present in the U.S. will be afraid of apprehension and deportation. They will therefore be particularly exploitable by employers, landlords or sharp traders, and will be particularly reluctant to seek medical attention or police protection.[33]

Undocumented Latinos are particularly vulnerable in the area of employment. Although undocumented immigrants are not authorized to work, witnesses at the Mount Pleasant hearing maintained that undocumented Salvadorans have been and will be able to find work. Nevertheless, finding work is likely to be difficult. Ms. Kaplan indicated that employer sanctions and the recession made it "much more difficult" to find employment.[34] She added that

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[28] Ibid., app. A-26 (sworn statement of Ms. Vega).

[29] Ibid., app. A-41 (sworn statement of Mr. Aviles).

[30] Ibid. Mr. Aviles, however, did note that TPS Salvadorans "suffer from more discrimination than people who have permanent resident status." *Id.*

[31] Ibid., app. A-40 (sworn statement of Mr. Aviles). The Immigration Reform and Control Act of 1986 prohibits a business from knowingly hiring an individual who is unauthorized to work in the United States. 8 U.S.C.A. § 1324a(a)(1)(A) (West Supp. 1992) Nor may a business continue to employ an individual after discovering that he was never authorized to work or has become unauthorized to work. 8 U.S.C.A. § 1324a(a)(2) (West Supp. 1992).

[32] *Latino Task Force Immigration Report*, app. A-37 (sworn statement of Ms. Kaplan).

[33] ACLU Public Policy Report, *Salvadorans in the United States: The Case for Extended Voluntary Departure* 55-56 (1983).

[34] *Latino Task Force Immigration Report*, app. A-35-36 (sworn statement of Ms. Kaplan). *See also* ibid., app. A-39 (sworn statement of Mr. Aviles) ("Central Americans find it much more difficult to find work without documents especially in a recession and in a time when

Latinos, whether they have TPS or are undocumented, have difficulty finding any work.[35] In addition to discrimination on the job, language and cultural barriers make employees, including poor Latinos and Asians, more vulnerable, stated Ms. Kaplan.[36]

According to Mr. Canjura, undocumented Latinos have "to take whatever they are offered and will have to receive whatever the employer wants to pay them" because of fear of deportation.[37] Mr. Aviles indicated that CARECEN had cases where the employers failed to pay undocumented Latinos even though "they worked a couple of weeks or months. . . ."[38] According to Sharon O'Day, director of Casa of Maryland's Day Laborer Assistance Project:

> Almost every Latino with whom I have talked has worked for a day or a longer period of time without receiving full payment for their work or without receiving compensation for injuries received on the job, or both. The standard response by the employer to the Latino employee who objects has been: "If you try to do anything to get your money, I am going to turn you in to the INS." This was true up until Salvadorans obtained TPS status, and is still a very standard response with other Latinos that are undocumented.[39]

Lori Kaplan noted that "[s]ometimes the manner in which [Latinos] are treated really depends on the integrity of [the] supervisor."[40]

Although labor laws protect even undocumented immigrants, the effectiveness of this protection is seriously diluted by the unwillingness of such persons to pursue claims.[41] Undocumented individuals are on the horns of a dilemma. If they pursue their labor claims against an employer, they are likely to undergo deportation hearings. If they fail to pursue these claims, it is likely that the discrimination will continue.

A common complaint of witnesses was that employers exploited Latinos. Ms. O'Day warned that the "exploitation of Latinos is creating a hostile and volatile situation between" the parties. "Where I work I see that the tensions created . . . easily heat up."[42] Ms. O'Day noted that Latinos with TPS are also "vulnerable" to discrimination:

> Some employers treat Latinos with temporary status [in a discriminatory fashion] because [the employers] realize that these individuals are still in a tenuous situation, in that their ability to stay in this country is only temporary, and they are therefore afraid to "rock the boat" in any way.[43]

Employer confusion about the work authorization of immigrant workers can also cause problems. For instance, when congressionally mandated TPS expired in June of 1992, many employers, believing that Salvadorans were no longer authorized to work, refused jobs to or fired Salvadorans with temporary protected status despite the government's extension of their work authorization for several months.[44]

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employers fear sanctions.")

[35] *See* Ibid., app. A-35 (sworn statement of Ms. Kaplan).

[36] Ibid., app. A-35-36.

[37] Ibid., app. A-32 (sworn statement of Mr. Canjura). Pedro Aviles stated employers told some clients that "without documents the Latino would be paid less." Ibid., app. A-40 (sworn statement of Mr. Aviles).

[38] Ibid., app. A-40 (sworn statement of Mr. Aviles).

[39] Ibid., app. A-9 (sworn statement of Ms. O'Day).

[40] Ibid., app. A-35 (sworn statement of Ms. Kaplan). She noted that clients indicate that job conditions are "terrible." She believes U.S. citizens and whites "are less apt to be treated poorly than" Latinos. Ibid., app. A-36.

[41] *See* Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984). The Court found a violation of the National Labor Relations Act (NLRA) when undocumented persons were reported to INS in retaliation for union activities. It noted that there was no "conflict between application of the NLRA to undocumented aliens and the mandate of Immigration and Nationality Act." *Id.* at 892. *See also* Espinoza v. Farrah Mfg. Co., 414 U.S. 86 (1973) (Title VII).

[42] *Latino Task Force Immigration Report*, app. A-9 (sworn statement of Ms. O'Day).

[43] Ibid., app. A-10.

[44] Ricardo Castillo, "Employers Put Burden of Proof on Salvadorans," *Washington Post*, June 28, 1992.

Housing is another area where undocumented persons face problems. Many undocumented tenants are afraid to exercise their rights, primarily because of the apprehension that their landlords will call authorities in reprisal.[45] Ms. Kaplan noted that, as an undocumented person, "you are subject to much worse living conditions in real slum kinds of housing."[46] As with employment, fear of deportation impedes undocumented persons from pursuing violations of housing laws.[47] Armed with this knowledge, landlords, if they desire, can take advantage of undocumented tenants. While one witness reported a small increase in the number of Salvadorans ready to pursue legal action against landlords, it was believed such action "is more likely the result of [Salvadorans] having some type of documentation and thereby feeling more secure."[48]

As discussed in greater detail in a later chapter, the fear of police is common among Latinos in the District of Columbia. At least part of this fear is the result of apprehension of being reported to the INS for deportation. But the hearing suggests a broader basis for the distrust of police. Pedro Aviles indicated that "the Latino fear is legitimate given the many incidents of police brutality against Latinos and the threats to refer the Latino to the INS made by some members of the police."[49] According to Ms. Kaplan, "Latinos generally try to steer clear of the police."[50] "The police also have a reputation for not really respecting the Central American community."[51]

Undocumented status impinges on Salvadorans' and others' access to health care as well. "[H]ealth conditions deteriorate when you are an undocumented person living . . . in the District. Many Salvadorans already do not go to hospitals because they are afraid of being deported. In many cases hospitals ask a Latino to document their immigration status."[52]

Additionally, undocumented persons often face problems in banking, as revealed by the 1990 closing of Latin Investment Corporation, an unlicensed bank that was not subject to the normal regulatory checks of banking institutions.[53] Many depositors, especially those who were undocumented, were attracted to the Latin Investment Corporation, because licensed District and other metropolitan area banks checked extensively for documentation.

> Banks have also become institutions that believe it is their right to screen Latinos and determine whether they are properly in this country. For example, banks do not need to have a social security number for non-interest bearing accounts, or checking accounts. However all local banks in Maryland require a social security number in order to open an account. . . . In Maryland, . . ., for example . . . in order to cash a check . . . a Maryland driver's license or a Maryland ID [is required], and the sign at the bank requiring such documents is only written in Spanish.[54]

The *Latino Task Force Immigration Report* quotes Elaine Grant, executive director, Woodrow Wilson International Center:

> If you are in this country without the proper papers the question of banking becomes moot. Undocumented men and women do not have social security numbers, a green card, or a passport. Latin Investment Corp. staff all spoke [S]panish. They didn't assume that anyone who could not

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[45] *Latino Task Force Immigration Report*, app. A-10 (sworn statement of Ms. O'Day).

[46] Ibid., app. A-37 (sworn statement of Ms. Kaplan).

[47] *See* Ibid., app. A-40 (sworn statement of Mr. Aviles).

[48] Ibid., app. A-41.

[49] Ibid., app. at A-40.

[50] Ibid., app. A-35 (sworn statement of Ms. Kaplan). *See* ibid., app. A-40 (sworn statement of Mr. Aviles) ("Latinos . . . have an extreme fear of the police.").

[51] Ibid., app. A-46 (sworn statement of Ms. Kaplan).

[52] Ibid.

[53] The Latin Investment Corporation was created to offer financial consulting services. However, it illegally acted like a properly licensed banking institution, accepting deposits and making loans. See ibid., p. 33 n. 178.

[54] Ibid., p. 33.

> speak English well was undocumented, and they didn't ask.[55]

For these reasons, undocumented individuals found it preferable to use an unlicensed bank such as the Latin Investment Corporation. When such a bank closes without insurance, undocumented aliens are likely to bear the brunt of the losses.

Boris Canjura summarized his concerns on the status of undocumented immigrants by declaring:

> The feeling here in the District is that the conditions that a Latino lives in as an undocumented person are simply unbearable. Undocumented people feel there is nowhere to go in the U.S. where they will not be exploited. Yet people are resigned to being exploited so that they do not have to return to El Salvador.[56]

The extent of the Salvadoran immigration to the United States, and particularly the District, the large number of unauthorized persons in the United States, and the reported discrimination against Latinos all point to a problem which has only grown over the past decade. With good fortune in El Salvador, the civil strife there may, over time, be eliminated. However, present discrimination and the short-term effects of immigration from El Salvador to the United States cannot be ignored. The quandary of the United States is how to respond to these issues responsibly, fully acknowledging both the dilemma of individual residents and the broad policy concerns of the Nation.

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[55] Ibid. at 34, *quoting Unlicensed Banking Practices and Failure of Latin Investment Corporation: Hearing Before the Subcomm. on General Oversight and Investigations of the House Comm. on Banking, Finance and Urban Affairs,* 102d Cong., 1st Sess. 32 (1991).

[56] *Latino Task Force Immigration Report*, app. A-32 (sworn statement of Mr. Canjura).

Chapter 3. Police-Community Relations

Poor police-community relations have been cited as one of the root causes of the Mount Pleasant disturbance in May 1991.[1] The D.C. Latino Civil Rights Task Force, formed in the aftermath of the disturbance, complained of "a real or perceived pattern of widespread, endemic racism and physical and verbal abuse by the Metropolitan Police Department against the Latino community."[2] Moreover, the task force in its report voiced concern over the police department's lack of sensitivity and responsiveness to Latino needs.[3] Five years ago, the Latino community expressed similar concerns about police-community relations in its report to the D.C. Government entitled the *Latino Community Agenda*.[4]

Witnesses at the Commission hearing alleged instances of police misconduct, including harassment, racial and demeaning language, excessive use of force, and the abuse of discretionary arrest power against the Latino community. Testimony also focused on the low number of Latinos and bilingual personnel in the MPD to communicate with a growing Spanish-speaking population, and the inadequacy of current police training and monitoring of police misconduct. Data analyzed by the Commission evidenced a pattern and practice of police misconduct within the Third District, which has the highest concentration of Latinos,[5] as well as an insufficient number of Latino and bilingual officers throughout the Department, which may have contributed to the heightened tensions in the Mount Pleasant community prior to the disturbance.

Police Misconduct in the Metropolitan Police Department

The District's Latino community asserts that police abuse and insensitivity are pervasive.[6] A D.C. attorney who has been working with the Latino community concluded at the Commission hearing:

> In fact, what we found was an attitude in the Latino community based upon their experience with the police and the evidence of misconduct which we discovered, that members of the Latino community may be subject to police misconduct . . . at any time, notwithstanding their socioeconomic status, language skills, profession, location or even their conduct.[7]

Another attorney testified about MPD officers' verbal abuse of Latinos: "Demeaning language, in the use of the term 'wetback,' [and] the use of the term 'Spic', is a daily occurrence."[8]

The Commission also received testimony from a number of Latino witnesses who alleged excessive force, harassment, demeaning language, and false ar-

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[1] Abrasive relationships between the police and minority communities have consistently been cited as an underlying cause of racial and ethnic tensions and even civil disorder. *See* U.S. Commission on Civil Rights, *Who is Guarding the Guardians?* (October 1981), p. 5 (hereafter *Guarding the Guardians*), *citing* Report of the U.S. National Advisory Commission on Civil Disorders (1968), p. 157.

[2] D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action, Final Recommendations to the District of Columbia Government*, Oct. 1991, p. 17 (hereafter *Latino Blueprint*).

[3] Ibid., p. 20.

[4] The Ad Hoc Coalition For A Latino Community Agenda, *Latino Community Agenda*, June 7, 1985, p. 37.

[5] Sixty-four percent of the District's Latinos live in the Third and Fourth Police Districts. The Third District (Adams Morgan) contains the largest concentration of Latinos (14.5 percent), followed by the Fourth District (Mount Pleasant) (9.4 percent). *See* table 3.1.

[6] *See Latino Blueprint*, p. 17.

[7] Daryl Veal, attorney, Fulbright & Jaworski, testimony, *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, 1992, vol. 2, p. 12 (hereafter *Hearing Transcript*).

[8] Juan Milanes, attorney, D.C. Latino Civil Rights Task Force, testimony, *Hearing Transcript*, vol. 2, p. 17.

TABLE 3.1
Demographic Composition of MPD Districts (1990)

Police district	Hispanic	Non-Hispanic	Black	Other race	Percentage of D.C. population
1	3.2%	43.2%	49.8%	3.7%	6.1%
2	6.2	83.3	5.7	4.8	18.4
3	14.5	36.3	46.0	3.2	10.4
4	9.4	11.1	78.1	1.5	20.9
5	1.8	8.7	88.6	0.9	17.8
6	0.6	0.8	98.3	0.3	10.7
7	1.3	6.4	91.4	0.9	15.7

rest by MPD officers. For example, an 18-year-old Latino male testified about an incident involving a Latino officer in January 1992:[9]

> I was sitting in front of the Bell School. A policeman came up and said that I should move. And I asked him if it was prohibited to be there. He said, "Yes." He grabbed my jacket and he pulled me. And I said, "Why are you pulling me?" And he threw me against a wall. He grabbed me by the neck and did like this [indicating choking]. . . . And after he had been hitting me for so long, he finally let go of me. . . . [H]e said, "Look. I feel sorry for you and that's why I'm not going to handcuff you and send you to the immigration [authority] and have you deported," as a way of intimidating me. . . . He kept talking to me saying I should change. My head was hurting. I started crying and I walked away. I went home. But my head was really hurting because he had beaten me on my head and he left marks on my throat from where he was torturing me.[10]

Another young Latino testified that while parking his friend's car, he was stopped by several MPD officers who pointed their guns at him, accused him of stealing the car, and used physical and verbal abuse, including ethnic slurs.[11] He alleged that the officers left after checking his identification and the car papers, without offering an apology.[12] The witness described how his experience was typical of the misconduct experienced by other Latinos:

> [I] believe that the incident reflects the way police treat Latinos in general, because I remember very well that there were other people in the same situation that I was, just driving around looking for parking. . . . [T]he situation is the one that made me come forward and protest these kind of incidents, because being a victim and having seen several other incidents, I believe that there is an attitude in the police department; at least several of the police officers that patrol the Mount Pleasant area [are] for some reason singling out Latinos.[13]

This same witness described another incident he observed shortly after the Mount Pleasant disturbance involving several Latino men standing on a corner:

> One of the officers started pushing the men, and actually he hit one man with his radio on the shoulder and told him to—you know, using very abusive language, very intimidating. . . . So after this officer hit the man, I got there, and the man asked me to tell the police, you know, because they didn't speak English. So they asked me to tell the police that they were standing on the corner; it was too hot to stay

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[9] Emilio Chevez, testimony, *Hearing Transcript*, vol. 2, pp. 103-04.

[10] Ibid.

[11] Omar Centurian, testimony, *Hearing Transcript*, vol. 2, pp. 82-83.

[12] Ibid., pp. 82-83, 85.

[13] Ibid., pp. 83-84.

inside their apartments; they live in the building across the street and they weren't doing anything wrong. They weren't drinking. The police responded that they didn't give a f*** what they had to say. . . . "And some of them, if they keep this s*** up, they're going to appear in the obituary pages," they told me. You know, I kept translating to people and tried to persuade the men that [the] police wanted them to move or disperse. . . . And one of the police officers had started walking backwards, like holding his gun, threatening to pull his gun. And other Latinos who were nearby started congregating and the situation was quickly deteriorating into a major confrontation. . . . and when the incident was just being resolved, I remember a sergeant and a Spanish-speaking officer finally arrived. But by then it was a little late.[14]

Arrests for Disorderly Conduct

Another form of police misconduct examined at the Commission hearing is the abuse of disorderly conduct arrests against Latinos.[15] The Commission received evidence from the Metropolitan Police Department that in the first quarter of FY 1991, no charges were brought in 65 percent of the 510 disorderly conduct arrests.[16] The MPD's own training curriculum recognizes this problem, as well as the need for training regarding disorderly conduct arrests.[17] Of all the Civilian Complaint Review Board's (CCRB) "use of force" complaints closed in FY 1991, approximately one-third of those cases involved the complainants' arrest for disorderly conduct.[18]

Numerous CCRB cases reveal that disorderly conduct arrests can be a tool of harassment or abuse. For example, the CCRB determined that a person was arrested for disorderly conduct in retaliation for merely requesting an MPD officer's name and badge number.[19] Moreover, persons who have been arrested for disorderly conduct have been subjected to excessive force while handcuffed, and some have sustained injuries such as broken ribs, head injuries, and broken teeth as a result of being hit in the head with a police radio or punched in the mouth by MPD officers.[20] In one case, an MPD officer advised a male pedestrian that he had walked across the street

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[14] Ibid., pp. 85-89.

[15] Veal Testimony, *Hearing Transcript*, vol. 2, pp. 12-13; Luis Rodriguez, former Metropolitan Police Department officer, testimony, *Hearing Transcript*, vol. 2, p. 522. The D.C. disorderly conduct statute provides:
"Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons; (4) interferes with any person in any place by jostling against such person or unnecessarily crowding him or by placing a hand in the proximity of such person's pocketbook, or handbag; or (5) causes a disturbance in any streetcar, railroad car, omnibus, or other public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees, shall be fined not more than $250 or imprisoned not more than 90 days, or both.
D.C. Code Ann. § 22-1121 (1989).
According to MPD orders:
"In cases of minor violations of the law, e.g., District of Columbia Municipal Regulations and, in the judgement of the officer, the circumstances surrounding the incident are such that a verbal warning would best serve the interest of the community, the member may issue such a warning as the proper enforcement action. However, in more serious or aggravated types of incidents, or those which indicate a serious disregard for the safety or welfare of others, or those in which the member has reasonable grounds to believe that the individual will ignore the warning, the appropriate enforcement action would be an arrest."
Metropolitan Police Department Operational Handbook, General Order No. 201.26 (Revised 6/25/86) (hereafter *MPD Handbook*).

[16] Metropolitan Police Department, Training Division, Experienced Officer Program Curriculum (1991).

[17] Ibid.

[18] CCRB, "Use of Force" Cases closed FY 1991.

[19] CCRB Case No. 89-197 (harassment allegation sustained by CCRB; affirmed by Mayor Marion Barry, Jr.).

[20] CCRB Case No. 83-52 (excessive force allegation sustained by CCRB; referred by Chief to Police Trial Board; Trial Board verdict "not guilty"); 86-106 (excessive force allegation sustained by CCRB, Chief reversed; Mayor's failure to act within 30 days resulted in default to Chief's decision); 86-174 (excessive force and demeaning language allegations sustained by CCRB; affirmed by Chief); 88-116 (excessive force allegations sustained by CCRB).

TABLE 3.2
Arrests for Disorderly Conduct*

Police district	1986	1987	1988	1989	1990
1	1,033	815	655	646	852
2	922	1,156	383	719	1,151
3	1,739	3,856	1,815	2,569	1,690
4	994	875	650	931	1,578
5	1,215	1,029	735	783	1,266
6	492	411	380	603	1,619
7	803	603	574	733	1,023
Total	7,557	8,989	5,362	8,694	10,567

Source: Metropolitan Police Department.
* Totals for individual districts reflect arrests made by officers assigned to that district. Total arrests include those made by all units.

against a "Don't Walk" signal and asked him to produce identification.[21] The pedestrian told the officer that he did not have to produce identification as long as he provided his name and address, according to a *Washington Post* article he had read. The officer arrested the man for "failure to make his identity known," and he resisted arrest.[22] A female pedestrian, who voiced her concerns over the man's arrest, was struck by the officer with a closed fist and subsequently arrested for disorderly conduct.[23]

The Commission's statistical (regression) analysis reveals a large and statistically significant relationship between disorderly conduct arrests and police misconduct complaints.[24] From 1986 through 1990, the Third District ranked the highest in disorderly conduct arrests.[25] It had 11,669 such arrests, more than double the number of such arrests from the second highest district.[26] With evidence that such arrests are often unwarranted, districts with an exceedingly high number of disorderly conduct arrests are a matter of concern.

Statistical Analysis of Citizen Complaints

The Commission examined citizen complaints and other data from the Civilian Complaint Review Board (CCRB) and the MPD in order to identify a pattern or practice of misconduct. Witnesses at the Commission hearing testified that many Latinos are reluctant to report police misconduct due to fear of the police or deportation, and other cultural reasons.[27] Thus, complaint data in police districts with a

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[21] CCRB Case No. 85-125.

[22] Ibid.

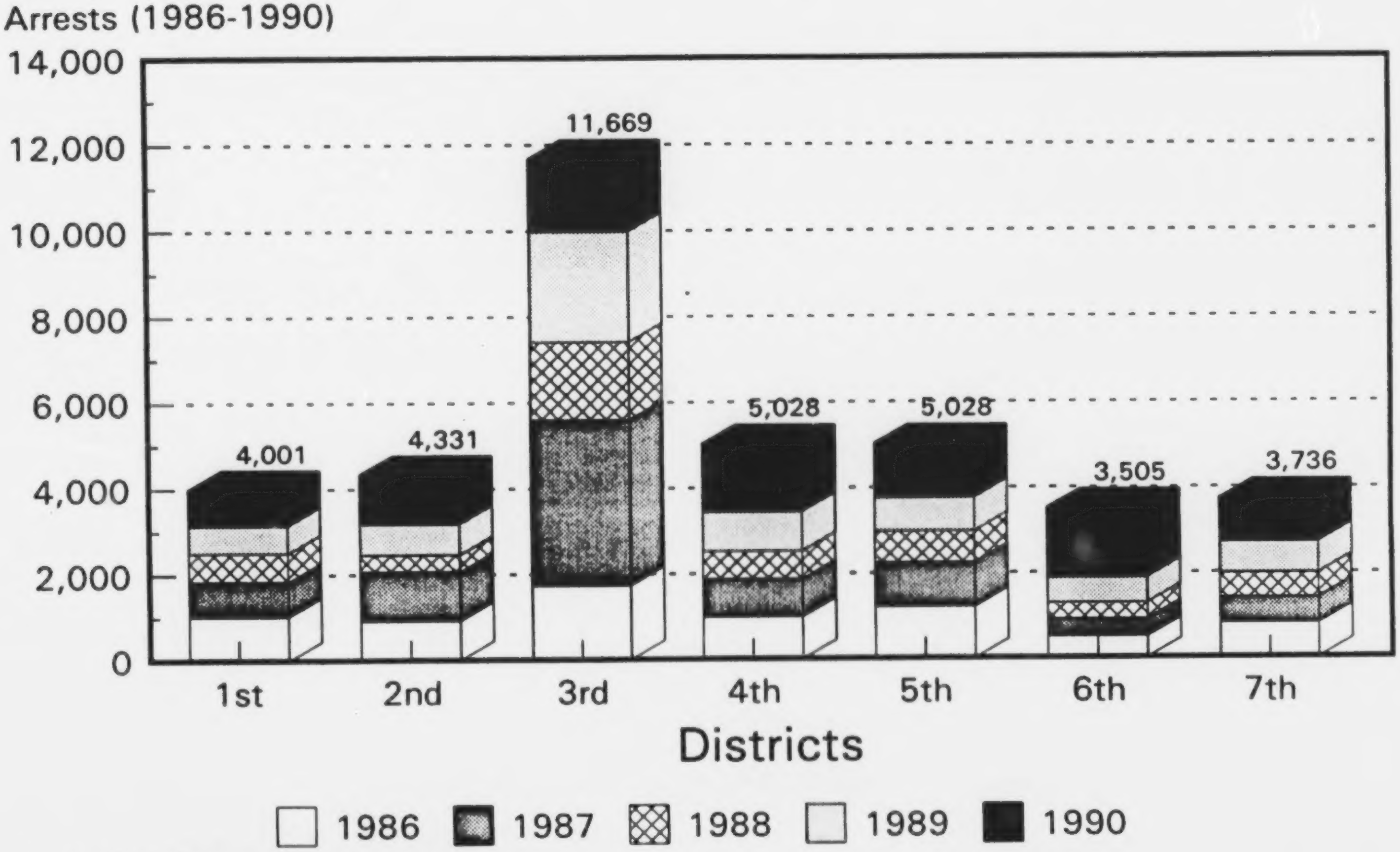
[23] Ibid. (excessive force allegation sustained by CCRB).

[24] Analysis of complaints and arrest data for police districts for 1986-1990 is based on ordinary least squares regression techniques. The relationship between disorderly conduct arrests and complaints was effectively zero in 1986 as measured across the seven police districts. However, the relationship became positive and increasingly large and statistically significant after 1986.
The coefficient values are interpreted to mean that approximately one complaint will arise for every 100 disorderly conduct arrests and for every 200 arrests of other types. Overall, the regression model explains 70 percent of the variation in complaints measured across districts and over time.

[25] *See* fig. 3.1 and table 3.2.

[26] Ibid.

FIGURE 3.1
Arrests for Disorderly Conduct, Metropolitan Police Department



Totals for individual districts reflect arrests
made by officers assigned to that District.

TABLE 3.3
Complaints Received by CCRB by District and Fiscal Year

Police district	1985	1986	1987	1988	1989	1990	1991	Total
1	34	55	51	56	41	40	61	338
2	31	36	38	24	44	34	51	258
3	39	46	75	81	83	84	59	467
4	17	49	33	38	33	56	69	295
5	29	41	53	53	33	58	66	333
6	17	28	23	34	40	44	60	246
7	31	55	46	40	51	46	59	328
Other	25	33	35	31	54	54	63	295
Total	223	343	354	357	379	416	488	2,560

TABLE 3.4
Complaints Received by CCRB from Hispanics by District and Fiscal Year

Police district	1987	1988	1989	1990	1991	Total
1	1	0	0	0	0	1
2	3	1	0	1	5	10
3	1	2	2	7	5	17
4	1	1	2	1	2	7
5	3	0	0	2	1	6
6	0	0	0	1	0	1
7	0	0	0	0	2	2
Other	0	3	2	1	2	8
Total	9	7	6	13	17	52

high concentration of Latinos, such as the Third and Fourth Districts, would considerably underestimate the extent of police misconduct.

Since 1982, the CCRB has received approximately 3,000 complaints of police misconduct.[27] The total number of complaints filed annually with the CCRB has risen rapidly in recent years. Between FY 1988 and 1991, the number rose from 357 to 488, for an average annual increase of 11 percent (see table 3.3).

Between 1987 and 1991, Hispanics (both resident and nonresident) filed only 52 complaints with the CCRB (see table 3.4).[28] This number represents 2.6 percent of the total for the period, which is less than half the rate expected based solely on the size of the Hispanic population in D.C. (see table 3.5). Particular attention was focused on the Third and Fourth police districts because they encompass the majority of the D.C. Hispanic population. The Fourth District, which includes Mount Pleasant, registered only

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[27] District of Columbia, Office of Policy and Program Evaluation, *Indices: A Statistical Index to the District of Columbia Services*, vol. 8 (August 1991), p. 335 (hereafter *Indices 1991*).

[28] Identification of Hispanic complainants was performed by Commission staff using Census Bureau procedures (including Spanish surname list). This approach is estimated to identify 85 percent of all Hispanics when applied to national data.

TABLE 3.5
Percentage of CCRB Complaints Filed by Hispanics by District and Fiscal Year

Police district	1987	1988	1989	1990	1991	Total
1	2.0%	0.0%	0.0%	0.0%	0.0%	0.4%
2	7.9	4.2	0.0	2.9	9.8	5.2
3	1.3	2.5	2.4	8.3	8.5	4.5
4	3.0	2.6	6.1	1.8	2.9	3.1
5	5.7	0.0	0.0	3.4	1.5	2.3
6	0.0	0.0	0.0	2.3	0.0	0.5
7	0.0	0.0	0.0	0.0	3.4	0.8
Other	0.0	9.7	3.7	1.9	3.2	3.4
Total	2.5	2.0	1.6	3.1	3.5	2.6

TABLE 3.6
Complaint Rates for Hispanic and Non-Hispanic Residents*

Area of residence	Non-Hispanic complaints (per 10,000)	Hispanic complaints (per 10,000)	Percent Hispanic population
Mt. Pleasant area (20010)	31.5	3.8	23.3%
Third District	34.7	15.3	14.5
Rest of D.C.	22.8	10.8	3.1

*Rates are based on total complaints for the period 1987-1991.

seven Hispanic complaints between 1987 and 1991, a rate of only one or two per year. In this period, the Third District registered 17 Hispanic complaints.

Limiting the analysis to just D.C. Hispanics reveals that less than one-third of all Hispanic complaints are filed by D.C. residents. Only two complaints were filed by Hispanic residents of D.C. in 1991, and both were against the Third District. Hispanic residents filed complaints at less than half the rate of non-Hispanics (see table 3.6).

With respect to CCRB complaints filed against officers per district, the Third District has generated more complaints than any other district (see fig.3.2). Over the 1985-1991 period, the Third District amassed 467 complaints, 38 percent more than the next closest district, the First District, which had 338 complaints.[29] This difference was most pronounced between 1988 and 1990. In this period, the Third District averaged nearly twice as many complaints per year as any other district.

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[29] It should be noted that within the past two fiscal years (FY 1991 and FY 1992), the Third District ranked fourth among the seven police districts in the number of complaints received. Information submitted by the Civilian Complaint Review Board, Oct. 28, 1992.

FIGURE 3.2
Complaints Received by CCRB (by District and Fiscal Year)

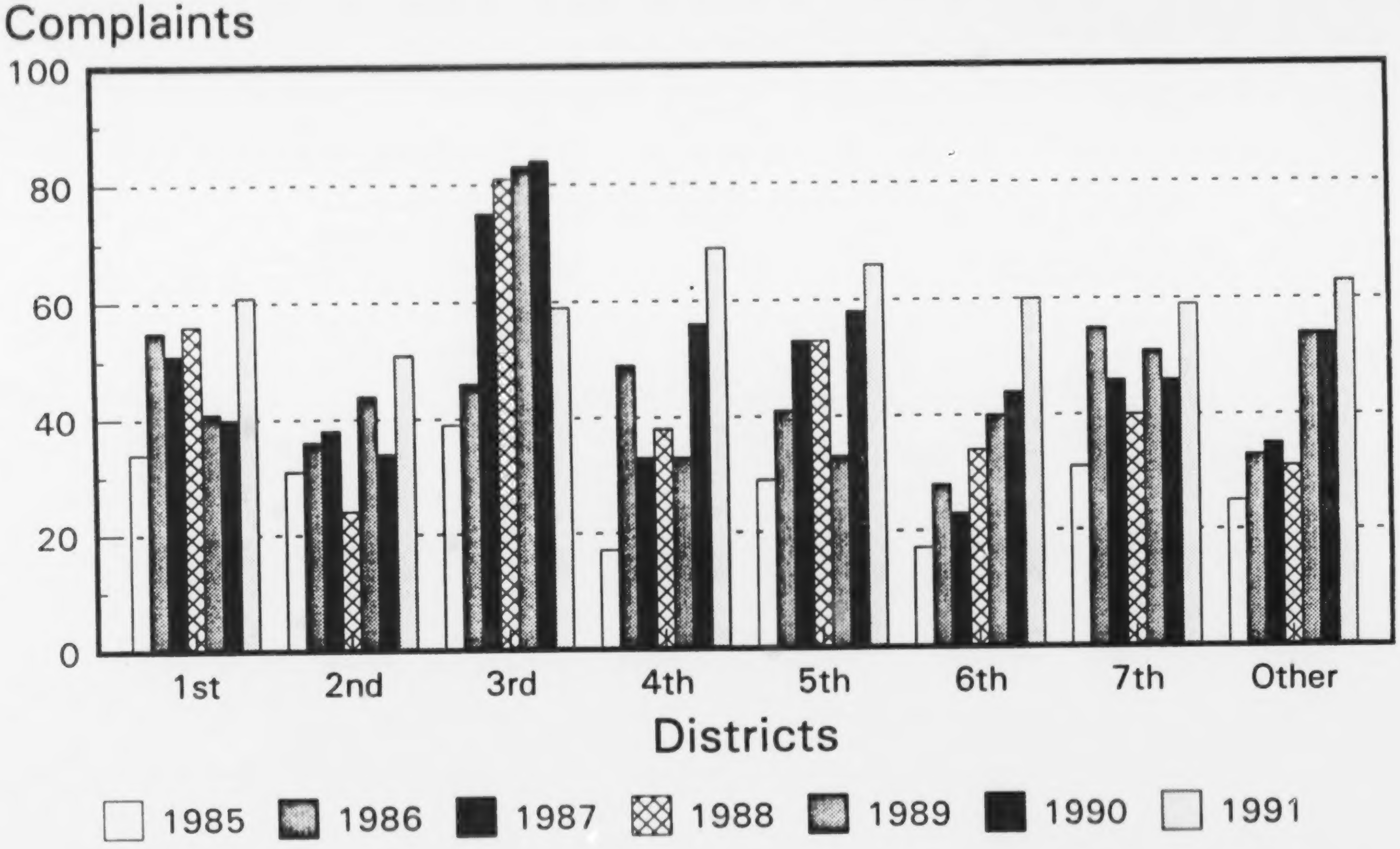

TABLE 3.7
Number of Officers Named in Complaints by Number of Prior Complaints against Officer and Percent of District Total

	Number of Priors						
District	**0**	**1**	**2**	**3**	**4**	**5+**	**Total***
1	21 40.4%	8 15.4%	4 7.7%	4 7.7%	2 3.9%	9 17.3%	52 100%
2	23 46.9%	7 14.3%	6 12.2%	3 6.1%	2 4.1%	3 6.1%	49 100%
3	16 32.0%	9 18.0%	5 10.0%	3 6.0%	1 2.0%	11 22.0%	50 100%
4	48 60.0%	11 13.8%	7 8.8%	4 5.0%	3 3.8%	3 3.8%	49 100%
5	28 52.8%	11 20.8%	2 3.8%	4 7.6%	1 1.9%	3 5.7%	53 100%
6	31 53.5%	10 17.2%	5 8.6%	2 3.5%	1 1.7%	5 8.6%	58 100%
7	22 44.0%	4 8.0%	9 18.0%	1 2.0%	2 4.0%	8 16.0%	50 100%
Other	21 44.7%	8 17.0%	3 6.4%	1 2.1%	4 8.5%	5 10.6%	47 100%
Total	210 47.8%	68 15.5%	41 9.3%	22 5.0%	16 3.6%	47 10.7%	439 100%

* Totals include a small number of unnamed officers.

The Commission analyzed CCRB data and found that 10 percent of uniformed officers are named in CCRB complaints each year (see table 3.7). Of the officers cited by name in CCRB complaints in 1991, 47 officers had been cited in more than five complaints over the past 7 years.[30] Comparison across police districts reveals that the Third District had more repeat offenders named in CCRB complaints than most other districts. Of Third District officers named in complaints during FY 1991, only 32 percent had not been previously named (versus 48 percent for all districts).[31] As of 1991, a Third District officer amassed 20 CCRB complaints, more than any other officer. A 1991 CCRB "Multiple Complaint Officer Report" (FY 1990), sent to Chief Fulwood, revealed that another Third District officer had eight pending complaints, more than any other officer cited in the report.[32]

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[30] Table 3.7.

[31] Ibid. Two other Districts, the First and Seventh, have a comparably high number of multiple complaint officers. The Fourth District has a low rate of multiple complaint officers. With respect to citizen complaints filed with the MPD (known as PD 99 complaints) against officers per district, the pattern across districts for 1990 is similar to that found for complaints filed with the CCRB. Specifically, the Third and First Districts stand out as having higher rates of PD 99 complaints per capita than the other districts.

[32] Civilian Complaint Review Board Multiple Complaint Officer Report FY 1990, Alfreda Davis Porter, Executive Director, CCRB, to Isaac Fulwood, Jr., Chief of Police, Mar. 27, 1991, p. 4.

The Commission also examined factors that might account for an unusually high number of complaints in the Third District, such as per capita resident complaint rate, officers per capita, police radio dispatch calls, crimes against persons and property, and arrests, including disorderly conduct arrests.

The Third District is characterized by considerable commercial activity and attracts large numbers of people from outside its boundaries that could account for the high number of complaints. Despite a very large share of the Third District's complaints being generated by nonresidents, the Third District's per capita complaint rate from residents is the highest: 17.4 complaints per 10,000 population.[33] Therefore, the Third District's high overall rate of complaints can be explained only in part by a high level of "traffic" through that district. The two other police districts with significant Hispanic populations, the Fourth and Second Districts, in sharp contrast to the Third, produce very few complaints from residents. There were only nine complaints filed by residents in the Fourth District and two complaints in the Second District for every 10,000 people during a 5-year period.

The Commission also studied the number of uniformed police officers assigned to each district for every 10,000 residents and compared the number of complaints per capita with the number of police officers per capita to determine if high numbers of citizen complaints of misconduct correspond to high numbers of officers.[34] Although the First District has many more officers assigned per capita, it had 38 percent fewer complaints than the Third District over the 1985-1991 period.[35] Thus, officers per capita does not account for the Third District's high overall complaint rate.

Police radio dispatch calls are another factor that could account for the Third District's high number of complaints. The Commission studied police radio dispatch calls per district from 1987 through 1991 (see table 3.10). This examination revealed that although the Third District has the highest overall CCRB complaint rate, it had the second lowest number of dispatch service calls for all districts. By contrast, the Sixth District had the least number of service calls for that time period, and the lowest citizen complaint rate.

The Commission examined crime and arrests trends on a district-by-district basis as additional factors that could account for differences in complaints among districts. Although the Third District had the highest number of police misconduct complaints, it did not have the highest crime rate. When examining crimes against property and persons per capita, the First District ranked highest, followed by the Second District.[36] From 1986 through 1990, overall arrests increased in every police district, except the Third and First Districts, which experienced a decrease of 15 percent and 22 percent, respectively.[37]

The Commission's analysis of citizen complaints in D.C. and other data reveals a pattern and practice of police misconduct within the Third District and illustrates the MPD's failure to provide effective self-monitoring. The evidence is overwhelming: the Third District had the highest overall CCRB complaint rate during the 1985-1991 period,[38] the highest complaint

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[33] *See* tables 3.8 and 3.9. Table 3.9 shows how many complaints are filed against each police district by the district's residents (1987-1991).

[34] This comparison is a measure of police field activity in relation to the population, which is a determinant of the potential exposure of residents to police contact. Districts with many officers per capita (i.e., per resident), might generate more interaction between the police and the residents, and possibly more complaints.

[35] The First District has the most officers per capita (139 per 10,000 residents). The Third District is ranked second (76/10,000), followed closely by the Sixth (68/10,000).

[36] From 1986 through 1990, crimes against persons and property in the District of Columbia increased by 59 percent. Yet during this time period, the First District experienced a decrease of 22 percent in overall crimes, and the Third District experienced a decrease of 15 percent. Over the same period, crimes against property increased slightly in the Second and Third Districts. Crimes against persons increased in every district except the Third, where they decreased by 1 percent. In the First District, homicides increased by 317 percent, and in the Sixth District by 240 percent. *Indices 1991*, p. 337.

[37] Ibid., p. 338.

[38] An analysis of sustain rates of CCRB complaints per district reveals that the Third District has the highest sustain rate for excessive force cases (7.74 percent, followed by the Fifth District's 5.68 percent sustain rate), and the second highest *overall* sustain rate (9.4 percent, exceeded only by the Sixth District's 12.5 percent overall sustain rate). The CCRB has indicated, however, that these sustain rates may overlook a significant number of cases which may have been meritorious, but could not be fully adjudicated due to a lack of resources. For

TABLE 3.8
Percentage of Police District Complaints by Residence Status of Complainant

Police district	District resident	Other District resident	Non-D.C. resident	District total
1	18.3%	61.3%	20.4%	100%
2	16.3	26.3	57.4	100
3	30.5	39.8	29.7	100
4	49.1	24.5	26.4	100
5	57.6	31.7	10.8	100
6	52.8	26.4	20.8	100
7	67.1	11.4	21.5	100

TABLE 3.9
Complaints Filed by Police District Residents

District:	1	2	3	4	5	6	7
Complaints filed by district residents per 10,000 population	11.4	2.5	17.4	9.1	13.3	15.8	16.4
Complaints filed by district residents	42	28	110	116	144	103	156
Uniformed officers per 10,000 population	138.9	43.9	76.4	37.2	48.0	67.8	55.2
Uniformed officers	514	490	482	472	518	441	527

TABLE 3.10
MPD Service Calls

District	1987	1988	1989	1990	1991
1	112,104	113,938	115,091	119,195	118,591
2	108,918	112,384	107,058	109,898	108,918
3	101,621	111,761	106,444	103,212	101,621
4	108,327	106,726	109,320	106,363	108,327
5	123,408	118,341	126,188	124,276	123,408
6	69,407	73,813	74,991	69,737	69,407
7	101,856	109,018	109,595	103,947	101,856

Source: Metropolitan Police Department.

rates from residents, and the most multiple complaint officers—officers repeatedly named in citizen complaints for police misconduct. Other factors that serve as measures of police contact with the public, such as police radio dispatch calls, crime levels, and officers assigned per capita, fail to account fully for the Third District's exceedingly high rates of complaints, multiple complaint officers, and disorderly conduct arrests. These statistics can only partially measure the extent of police misconduct within the Third District, as many incidents go unreported, especially, according to testimony received by the Commission, incidents involving Latinos, which heighten their sense of frustration with the police.

The Metropolitan Police Department's Response to Police Misconduct

Training

For our nation's law enforcement officers, policing has become increasingly dangerous and complex. The U.S. homicide rate climbed from 5 per 100,000 population in 1960 to 9 per 100,000 in 1989.[39] In 1991 the District of Columbia recorded 489 homicides, breaking its homicide record for the fourth consecutive year.[40] Some experts assert that the Nation's "fear of crime has given the police carte blanche to 'control the streets and enforce the status quo'," and "this has led to an institutional toleration of police abuse."[41]

Inexperienced officers may rely more readily on the use of force where they lack knowledge and training on its proper use. In his testimony at the Commission hearing, Officer Gary Hankins, then Chairman of the Metropolitan Police Labor Committee of the Fraternal Order of Police, concluded: "I believe that force sometimes is used when officers don't have that kind of confidence, don't have the knowledge they need about alternatives, and may resort to their authority or the color of their authority to hide their fear."[42] He criticized the MPD's past and present training efforts:

> We do not today, nor have we for at least a decade, adequately trained Metropolitan Police Officers. We do not today, nor have we for at least 8 years recruited aggressively and held our standards up high enough to assure that the people that we're requiring to do the job are able to assimilate the information they need from training and then use it on the street. Police officers today, here in the Nation's capital and all over the world, or all over this country anyway, are being asked to do increasingly complex things in a more sophisticated legal system [than we've] ever encountered before and we are not training them. We are not giving them the tools to do the job. The Metropolitan Police Department. . . has no comprehensive training program.[43]

Similarly, Deputy Chief Soulsby, new Commander of the Third District, observed: "[I] have approximately 230 police officers who have less than 3 years of [service]. Many of these officers need additional routine training, but they also need specific training as it relates to the Hispanic community."[44]

Testimony at the Commission hearing revealed that training for experienced officers, as well as recruits, has been deficient. Chief Fulwood acknowledged that for almost one and a half years, the MPD provided no training for experienced officers:

> One of the things that happened, when you look at the information for almost a year and a half, we haven't had experienced officers' training at all. We were purely operating on trying to get the recruits. We processed 1,500 recruits through the training academy in a year and a half, so we couldn't do a lot of other things. Now we're back to doing those things that we think are significant, which is to deal with the work force that we have now and to provide the most current training for those personnel in order to deal with the problem of misconduct.[45]

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[39] Lance Morrow, "Rough Justice," *Time*, Apr. 1, 1991, p. 17.

[40] Rene Sanchez and Sari Horwitz, "Fulwood Vows to Dig in to Curb Violence," *Washington Post*, Jan. 3, 1992, p. C1.

[41] *See* Darlene Ricker, "Behind the Silence," *ABA Journal*, July 1991, p. 46.

[42] Officer Gary Hankins, Fraternal Order of Police, testimony, *Hearing Transcript*, vol. 2, p. 266.

[43] Ibid., pp. 221-22.

[44] Deputy Chief Soulsby, testimony, *Hearing Transcript*, vol. 2, p. 172.

[45] Isaac Fulwood, Jr., Chief of Police, testimony, *Hearing Transcript*, vol. 2, p. 127. Experienced officers receive some training during roll

Although recruits receive 64 hours of firearms/tactical training and 113 hours of physical training, which includes crowd control and restraint techniques, there is an inadequate number of specific courses devoted to the use of force, its alternatives, and the importance of reporting its use (see table 3.11). Training for experienced officers and supervisors includes specific courses dedicated to use of force that emphasize departmental policies and procedures and reporting requirements, and enable those supervisory officers to distinguish between force, deadly force, excessive force, unlawful force, and reasonable force.[46] It is equally important that inexperienced officers receive such instruction so that policies are clearly understood by all members and uniformly enforced.

Training designed to reinforce the officers' code of conduct and ethics is also essential for maintaining professionalism within the department, as well as maintaining the public's confidence. The Recruit Training program offers 6 hours of instruction on the code of conduct and ethics,[47] and experienced officers receive 2 hours of instruction on ethics.[48] However, the First Line Supervisor Program for sergeants does not include such instruction.[49] The MPD has responded that "[t]he fact that the First Line Supervisor Program for sergeants does not include ethics training is a recognition that at this level all sergeants would have already received considerable training [8 hours] in this area."[50]

Although recruits and experienced officers receive instruction on disorderly conduct arrests,[51] testimony received by the Commission revealed that abuses continue to occur with arrests for disorderly conduct. This indicates that greater emphasis must be placed on training and refresher training on the requirements for a disorderly conduct charge.

There may be no single skill used more frequently by officers than the ability to communicate effectively, yet only a small amount of training time is devoted to this subject.[52] Human relations and communications skills training are on the average only 5 percent of recruit training curricula nationwide.[53] One expert estimates that 90 percent of recruit training is devoted to knowledge and skills that comprise no more than 10 percent of a police officer's job.[54]

Although D.C. law requires the Metropolitan Police Department to establish an "intensive human relations training program for police officers at every level of command,"[55] recruits receive only 16 hours of human relations training, a mere 2 percent of total training. Experienced officers receive only 4 hours of human relations training.[56] Officer Hankins described the training that was required by the MPD during the 1970s which involved extensive role-playing: "We had professional psycho-dramatists setting

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call. Commanding officers establish a schedule that provides 30 minutes of in-service roll call training per week in a subject area designated by the Training Division. The first week of each month must be allotted to unit commanders for their individual training needs. MPD Handbook, General Order 404.6 (effective Jan. 28, 1972).

46 Metropolitan Police Department, Training Division, First Line Supervisor Program (1991), p. 2; Experienced Officer Program (1991), p. 8.

47 Metropolitan Police Department, Training Division, Recruit Training Curriculum (January 1991).

48 "This block of instruction makes inquiry into the relationship between morality and law and the contemporary debate illustrated by the issues of human and civil rights, the enforcement of sexual morality, civil disobedience, and the ethics of law enforcement." Metropolitan Police Department, Training Division, Master Patrol Officer Program (1991), p. 7; Experienced Officer Program (1991), p. 6.

49 Metropolitan Police Department, Training Division, First Line Supervisor Program (1991).

50 The Metropolitan Police Department's Response to the United States Commission on Civil Rights' Draft Report on Police-Community Relations, Nov. 9, 1992, p. 9 (hereafter MPD Response to Draft Report).

51 Metropolitan Police Department, Training Division, Recruit Training Curriculum (1991); Experienced Officer Program (1991), p. 3; Master Patrol Officer Program (1991), p. 3.

52 "Police Recruits: Training Tomorrow's Work force," *FBI Law Enforcement Bulletin*, Mar. 1992, p. 22.

53 Ibid.

54 Ibid.

55 D.C. Code Ann. § 4-909(c) (1988).

56 Metropolitan Police Department, Training Division, Experienced Officer Program (1991), p. 1; Master Patrol Officer Program (1991),

Table 3.11
Recruit Training Curriculum, Metropolitan Police Department (January 1991)

		Hours
Orientation		40
Level 1	Organization of MPD/Code of Conduct and Behavior	27
Level 2	D.C. Code (Crimes Against Persons/Disorderly Statutes) includes 6 hrs. training on code of conduct	24
Level 3	D.C. Code (Crimes Against Property) includes 3 hrs. training on disorderly conduct laws	32
Level 4	Criminal Procedure (Arrest, Search and Seizure laws)	36
Level 5	Criminal Procedure (Rules of Evidence, Warrants and Processing Criminal Cases)	63
Level 6	Investigative Patrol Techniques	35
Level 7	Report Writing	52
Level 8	Recording, Handling Property	20
Level 9	Municipal Regulations/Unique Patrol Operations	22
Level 10	Traffic Regulations	18
Level 11	Traffic Enforcement	31
Level 12	Firearms/Tactical Training	64
Level 13	Driver Training/Radar Certification	88
Level 14	First Responder	40
Level 15	Physical Training/Street Survival	113
Behavioral Science (includes 24 hrs. crisis intervention training and 16 hrs. human relations training		69
Administrative		40
TOTAL		814

up situations that we had to deal with, and they involved race and sex and the tension and the violence that you'd be involved in. That program is a shadow of its former self."[57]

Deputy Chief Soulsby highlighted the importance of human relations training: "One of the main things that I tell my officers, from the day I took over, a top priority in training in human relations is to treat everyone with respect. . . . [A] professional attitude goes a long way in preventing complaints."[58] Effective and aggressive law enforcement is not incompatible with police-community interaction founded on respect, as illustrated when Deputy Chief Soulsby acknowledged that, as an officer, he led his section in arrests without receiving a single citizen complaint.[59] Training and retraining are needed to instill these achievable high standards for conduct in recruits, as well as to reinforce them in experienced officers.

Testimony at the Commission hearing stressed the need for multicultural sensitivity training to address the challenges of policing in an increasingly diverse community. David Yniguez, vice president of the National Council of La Raza, testified:

> There are many examples of where law enforcement types from one culture or ethnicity approach a citizen on the street in a way that he or she believes is perfectly normal but, in fact, is enormously insulting to the person being approached. This then begins to ignite potential confrontations. Sometimes, the use of language, the use of how you translate instructions or inquiries, gestures, or how close you speak to a person can make a great deal of difference and can lead to dark consequences.[60]

Prompted in part by the "expanded Asian population in the District of Columbia," and "the fact that the Latino population is growing," the Department's proposed multicultural sensitivity program, according to Chief Fulwood, would address the "need to understand culturally the kinds of things that happen in those neighborhoods and how we can best address those problems."[61]

After the Commission hearing, the MPD indicated that it would begin providing biweekly, 2-day multicultural/sensitivity training in June 1992 to groups of 30 officers working in the Third and Fourth Districts under an arrangement with the University of the District of Columbia.[62] However, community-based organizations and leaders that serve minority populations, including the Latino community, did not have any meaningful input in the development and implementation of the Department's $50,000 sensitivity training program and curriculum to ensure the program's responsiveness to the needs of the community.[63] Nor is it clear to what extent, if at all, intensive multicultural sensitivity training will be integrated throughout the Department's training, or whether it will be reviewed periodically and revised to ensure that it continues to meet the needs of the community and the officers that serve it.

The MPD recently acknowledged that "additional training for officers is necessary in human relations, ethics and other subjects."[64] The Department informed the Commission that it has recently expanded the Recruit Training curriculum from 20 to 23 weeks. In addition to sensitivity training, the supplemental coursework will focus on the use of force, disorderly conduct arrests, use of the baton and handcuffs, restraint techniques, and firearm retention. Although "[i]t is the goal of the Department to have all officers receive periodic re-training. . . [l]imited resources and the City's finances makes this an increasingly difficult goal to achieve quickly."[65]

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[57] Hankins Testimony, *Hearing Transcript*, vol. 2, p. 233.

[58] Soulsby Testimony, *Hearing Transcript*, vol. 2, p. 175.

[59] Ibid., vol. 2, p. 178; Deputy Chief Soulsby, Metropolitan Police Department, interview in Washington, D.C., Dec. 10, 1991.

[60] David Yniguez, Vice President, National Council of La Raza, testimony, *Hearing Transcript*, vol. 1, p. 90.

[61] Fulwood Testimony, *Hearing Transcript*, vol. 2, pp. 142-43.

[62] Summary District Government Agencies' Activities and Plans for Improving the Delivery of Services to Latino Residents, Apr. 28, 1992, p. 15 (hereafter Delivery of Services to Latino Residents).

[63] Gabriel Escobar, "Sensitivity Training for D.C. Officers is Called Insulting," *Washington Post*, Oct. 14, 1992, p. D1. The Commission's State Advisory Committees have recommended human relations training for all police officers, and recommended that local minority groups be utilized in human relations training. *See* District of Columbia Advisory Committee, *Police-Community Relations in Washington, D.C.* (June 1981), p. 11; Florida Advisory Committee, *Police-Community Relations in Tampa-An Update* (September 1991), p. 16.

[64] MPD Response to Draft Report, p. 8.

Early Warning Systems

More than 10 years ago, the U.S. Commission on Civil Rights found that "early warning" information systems may assist police departments in identifying violence-prone officers.[66] Police departments in Chicago, Houston, New York City, and Dade County, Florida, are just a few that have implemented operational "early warning systems."[67] These early warning systems vary in organizational structure, criteria for identification of officers, and methods of intervention.

At the time of the hearing, the Metropolitan Police Department had not yet implemented a proposed early warning system. According to Chief Fulwood:

> The early warning system is designed to identify officers who have multiple complaints against them. And those complaints may not have been adjudicated at that point, but clearly there's an indication that this officer has one, two, three, four, five complaints. The early warning system requires the Commanding Officer of that unit, upon notification, to interview that officer directly, and make that officer aware, "You have five complaints of alleged demeaning language. And while we're saying to you that nobody has proven that you've done anything wrong, it's clear that something may be happening."[68]

Chief Fulwood further explained that under the proposed system, the Commanding Officer would also refer the officer by letter to the Police and Fire Clinic to be interviewed for a fitness for duty physical and to make a determination about whether the officer is still capable of performing patrol duties and policing in an impartial manner.[69] Where there is a "pattern of police misconduct existing in the District," the Patrol Operations Officer would meet with the subject officer's Commanding Officer to discuss the trends or the need for training.[70] In some instances, an officer with multiple complaints may be removed from street duty and placed on desk duty pending adjudication of the complaints.[71]

Subsequent to the hearing, the MPD implemented an early warning system "to identify and assist sworn members who exhibit behavioral patterns that negatively affect the Department's relationship with the community and are detrimental to their careers."[72] The new system consists of: (1) monitoring the behavior of members to identify those who may be experiencing problems; (2) evaluating the member's behavior to identify any problems that exist and the type of assistance that may be needed; and (3) providing assistance, when needed, to the member to change the negative behavioral patterns.[73] The MPD's Office of Professional Standards is responsible for maintaining the monitoring component of the system by examining all citizen complaints filed with the Department (P.D. 99 complaints) and the Civilian Complaint Review Board; civil lawsuits resulting from Department-related activities; all instances in which an officer has been recommended for adverse action; and all cases in which an officer's police powers have been revoked as a result of a traffic or misdemeanor arrest.[74]

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[65] Ibid.

[66] *Guarding the Guardians*, p. 81.

[67] Chicago Police Department General Order No. 83-3 (effective Mar. 9, 1983); Sergeant Lampignano, Personnel Concerns Program, Houston Police Department, telephone interview, Feb. 21, 1992; Lieutenant Michael Arcari, Early Intervention Unit, New York Police Department, telephone interview, Feb. 26, 1992; Kathleen McNamee, Internal Affairs Department, Metro-Dade Police Department, telephone interview, Feb. 21, 1992.

[68] Fulwood Testimony, *Hearing Transcript*, vol. 2, pp. 122-23.

[69] Ibid., p. 123.

[70] Ibid., pp. 123-24.

[71] Ibid., p. 125.

[72] MPD Response to Draft Report, p. 9.

[73] Ibid.

Key to any early warning system is the method of intervention. Merely identifying officers who demonstrate a pattern of behavior that may interfere with their performance, without implementing appropriate and meaningful action, such as close monitoring, intensive training, or counseling, is ineffective, as illustrated by Edward Spurlock, former Commander of the Third District, in his testimony before the Commission:

> [W]e . . . had a requirement that anybody who receives two or more complaints, whether . . . unfounded or not, we had to counsel them. I don't know what it was that I was supposed to say to my people because I didn't even know what the complaints were about. And most of the time the officers did not even know what the complaints were about.[75]

Under the Department's new early warning system, it is unclear what specific methods of intervention will be employed. Nor is it clear to what extent, if at all, such intervention or assistance will mandate a member's participation for a specific period of time.[76]

MPD Investigations of Police Misconduct Cases

All citizen complaints against members of the Metropolitan Police Department involving allegations of use of excessive force, harassment or demeaning language must be referred by the MPD to the Civilian Complaint Review Board (CCRB), which has exclusive jurisdiction in those areas.[77] The MPD has not translated its form for referring complainants to the CCRB (P.D. Form 24) into Spanish or corrected the erroneous address and phone number for the Civilian Complaint Review Board on the form.

The MPD has detailed procedures for the receipt, investigation, and resolution of all other citizen complaints that fall under the Department's jurisdiction.[78] A P.D. Form 99 is the citizen complaint form used by the MPD to document all complaints against members of the police department, whether the complaint is registered in person, by mail, or over the phone.[79] The P.D. 99 citizen complaint form also is not available in Spanish.[80]

The MPD's Field Inspections Unit is required to conduct periodic audits of the reports received and filed by the Department; interview complainants to ascertain the quality of police service and the accuracy of reporting; and prepare statistical reports on citizen complaints, including those filed with the MPD and the CCRB.[81] Although the Field Inspections Unit has conducted audits of equipment, uniforms, building safety, and station funds,[82] it has not audited the reporting of use of force cases.[83] The Commission received testimony that MPD officers often do not fill out the required forms to document

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[74] Ibid.

[75] Edward Spurlock, former Deputy Chief, Metropolitan Police Department, testimony, *Hearing Transcript*, vol. 2, p. 291. Deputy Chief Spurlock retired Aug. 31, 1991. The MPD receives periodic reports from the CCRB listing all officers who are the subject of multiple CCRB complaints, as well as the nature of those complaints.

[76] Under Houston's early warning system, if an officer is recommended for its Personnel Concerns Program, the mandatory minimum amount of time an officer must spend in the program is 12 months. Sergeant Lampignano, Personnel Concerns Program, Houston Police Department, telephone interview, Feb. 21, 1992.

[77] For a more detailed discussion of the Civilian Complaint Review Board's processing of citizen complaints, see chap. 4.

[78] *See* MPD Handbook, General Order No. 1202.1; Special Order No. 87.8 (effective Mar. 6, 1987).

[79] MPD Handbook, General Order No. 1202.1, Part I(E)(6)(d)(5).

[80] Fulwood Testimony, *Hearing Transcript*, vol. 2, p. 117.

[81] MPD Handbook, General Order No. 101.10, Part V(A) (revised June 1986).

[82] Insp. Thomas C. Hammett, Director, Field Inspections Division, Metropolitan Police Department, interview in Washington, D.C., Dec. 3, 1991 (hereafter Hammett Interview).

[83] Ibid. According to MPD regulations, all members of the force must maintain records of all stops and frisks and may maintain records of other police-citizen contacts. Whenever any force is used to stop a person, or whenever any frisk is conducted, regardless of whether an arrest follows, a report (P.D. Form 251—Incident/Event) must be made containing all pertinent details. General Order No. 304.10.

and report the use of force during stops and frisks, often to avoid problems.[84] The unit has also not audited the processing and disposition of citizen complaints because fraud or waste in the Department is a priority.[85]

Accreditation for Law Enforcement Agencies

Testimony before the Commission indicated that both officials and rank and file officers in the MPD believe that the performance of the Department as a whole would improve if a concerted effort were made towards attaining accreditation by the Commission on Accreditation for Law Enforcement Agencies. Over 900 law enforcement agencies are seeking accreditation through the Commission on Accreditation for Law Enforcement Agencies[86] in an effort to achieve and maintain a level of professional excellence, develop proactive management systems and document procedures, decrease liability insurance costs, and deter liability litigation.

The Commission on Accreditation for Law Enforcement was formed in 1979 through the combined efforts of major law enforcement membership associations—the International Association of Chiefs of Police (IACP), National Organization of Black Law Enforcement Executives (NOBLE), National Sheriffs' Association (NSA), and the Police Research Forum (PERF).[87] More than 900 standards related to major areas of law enforcement were promulgated by the accreditation commission.[88] In general, it takes law enforcement agencies 18 months to 2 years to comply with all applicable standards.[89]

Although accreditation may be a costly and labor intensive process, Officer Gary Hankins, then chairman of the Metropolitan Police Labor Committee, described the benefits of accreditation to a police department and the community it serves:

> Once you're accredited you have to maintain that accreditation, and some of the officers I spoke to spoke about a transformation in the agency where they established an office for accreditation and started focusing on these standards and how to meet them. It had a pervasive effect on the organization because it affects everyone eventually and they buy into it and they feel better about themselves. And I believe they do their jobs better.[90]

Chief Fulwood, in hearings before the House Subcommittee on District of Columbia Appropriations, testified: "It appears that law enforcement accreditation is an appropriate process for us to go through. It will give us the opportunity to get a critical look from

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[84] *See* Luis Rodriguez, former Metropolitan Police Department officer, testimony, *Hearing Transcript*, vol. 2, p. 526; Officer Juan Espinal, Metropolitan Police Department, testimony, *Hearing Transcript*, vol. 2, p. 526.

[85] Hammett Interview.

[86] In the U.S. and Canada, 195 law enforcement agencies are accredited by the Commission on Accreditation for Law Enforcement Agencies. A total of 921 agencies are in some stage of the accreditation process. Very few accredited agencies are police departments of comparable size to the Metropolitan Police Department. The few larger, urban police departments that are accredited include: Phoenix Police Department (2,676 full-time personnel; accreditation date—1986, reaccreditation date—1991); Baltimore County Police Department (2,090 full-time personnel; accreditation date—1984; reaccreditation date—1989); Houston Police Department (6,770 full-time personnel; accreditation date—1988). Commission on Accreditation for Law Enforcement Agencies, Inc., *Commission Update* (January 1992), pp. 2, 4-9.

[87] The accreditation commission was formed to establish a body of standards to increase law enforcement agency capabilities to prevent and control crime, increase agency effectiveness and efficiency in the delivery of services, increase cooperation and coordination with other law enforcement agencies, increase citizen and employee confidence in the policies and practices of the agency, and develop an accreditation process that provides law enforcement agencies with the opportunity to demonstrate voluntarily that they meet professional standards. Commission on Accreditation for Law Enforcement Agencies, Inc., *Standards For Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program* (October 1991), p. xi (hereafter *Standards Manual*).

[88] The standards have been submitted to law enforcement agencies for review and comment and structured field review in selected law enforcement agencies within all 50 States. Ibid., p. xiii.

[89] Commission on Accreditation for Law Enforcement Agencies, Inc., *Accreditation Program Overview Brochure* (1984), p. 8.

[90] Hankins Testimony, *Hearing Transcript*, vol. 2, pp. 263-64.

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the outside at some of the problems that law enforcement faces in the changing environment. So I certainly would support that."[91] Subsequent to the Commission hearing, the MPD "has committed significant resources to initiate and complete the accreditation process which, if successfully completed, will be effective for five years."[92]

The Federal Response to Police Misconduct

The Federal Government can contribute significantly to remedying problems of police abuse by the identification and prosecution of abuse cases. The number of excessive force complaints filed and sustained varies from city to city.[93] Since the Federal Government has not established uniform reporting requirements for excessive force complaints, a meaningful comparison cannot be made. Moreover, the Federal Government does not maintain national statistics on police discipline and, as a result is unable to identify disciplinary patterns on a national and regional basis and determine whether Federal intervention is necessary.[94] Representative Don Edwards (D-Calif.), Chairman of the House Subcommittee on Civil and Constitutional Rights, has proposed that the Department of Justice collect statistics on the disciplining of police officers as part of the uniform crime reports.[95] Such information is critical to formulating an effective national response to the problem of police abuse.

In 1981 the Commission found that sections 241[96] and 242[97] under Title 18 of the U.S. Code, authorizing the U.S. Department of Justice to prosecute police officers for Federal criminal civil rights violations, suffered from substantive and procedural defects that impede the prosecutive efforts of the Department of Justice and may account for the disparity in the number of complaints filed with the Department and the number successfully prosecuted.[98]

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[91] *District of Columbia Appropriations for 1992: Hearings before the Subcomm. on District of Columbia Appropriations of the House Comm. on Appropriations*, 102nd Cong., 1st Sess. 1652 (1991).

[92] MPD Response to Draft Report, p. 11.

[93] Lance Morrow, "Rough Justice," *Time*, Apr. 1, 1991, p. 17.

[94] *See Police Brutality: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House of Representatives Comm. on the Judiciary*, 102nd Cong., 1st Sess. 126 (1991) (testimony of Paul Hoffman) (hereafter *Police Brutality Hearings*).

[95] *Id.* at 131. The Justice Department currently collects data on Federal criminal offenses as part of the uniform crime reports. Uniform Federal Crime Reporting Act of 1988, 28 U.S.C.A. § 534 (West Supp. 1992). Similarly, under the Hate Crime Statistics Act, the FBI is required to collect statistics on "hate crimes," and local authorities must report these incidents to the FBI. The Justice Department is also charged with the responsibility of establishing guidelines for the collection of data and for publishing an annual summary of the data. *See* Hate Crime Statistics Act, 28 U.S.C.A. § 534 note (West Supp. 1992) (reporting to run 1990-1994).

[96] Title 18 § 241 provides as follows:
"Conspiracy against rights.
"If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
"If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured
"They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."
18 U.S.C. § 241 (1988).

[97] Title 18 § 242 provides:
"Deprivation of rights under color of law.
"Whoever, under color of law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitants being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."
18 U.S.C. § 242 (1988).

[98] *Guarding the Guardians*, p. 113. Since October 1988, the U.S. Department of Justice has prosecuted 123 individual law enforcement

The Supreme Court has interpreted section 242 as requiring "specific intent" to deprive the victim of a federally or constitutionally guaranteed right."[99] Similarly, the Supreme Court has read a specific intent requirement into section 241,[100] which requires proof of "specific intent" on the part of a conspirator to hinder the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of the United States.[101]

The Commission found that the judicially imposed "specific intent" requirement under section 242 has made prosecutions more difficult because it requires proof that the offender intended to accomplish the precise act prohibited by law, rather than simply proving that the consequences of the act were substantially certain to occur, which is all that is required for a showing of "general intent."[102] Moreover, the Commission found that application of the "specific intent" requirement is often confusing to juries and has proved in practice to be an impediment to successful prosecutions.[103]

Another problem cited by the Commission was the Department of Justice's lack of authority to bring suits against police departments where a pattern or practice of police abuse is alleged.[104] Although the U.S. Department of Justice has recognized the importance of bringing suit against police departments where a pattern or practice of police abuse is alleged to exist, court decisions have held that the Department has virtually no legal authority to bring suits to prohibit the continuation of such practices in the absence of specific statutory authority.[105] In addition, private litigants also lack authority to undertake "pattern and practice" lawsuits to enjoin certain practices of law enforcement officers, even where police abuse is widespread and institutional.[106] Congress has given the Justice Department "pattern and practice authority" under other statutes, including Title II of the Civil Rights Act of 1964, which prohibits discrimination or segregation in places of public accommodation,[107] and the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA).[108] The need remains for Federal legislation specifically authorizing civil actions by the Attorney General of the United States against appropriate government and police department officials to enjoin

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officers on charges stemming from police brutality. Seventy-five percent of the officers were convicted. David Jackson, "Difficult Path to Justice in Cop Brutality Cases," *Chicago Tribune*, May 3, 1992, p. 1.

[99] Screws v. United States, 325 U.S. 91, 103 (1945); *see also* United States v. Hayes, 589 F.2d 811, 820 (5th Cir. 1979), *reh. denied*, 591 F.2d 1343, *cert. denied*, 444 U.S. 847 (1979).

[100] *See* United States v. Price, 383 U.S. 787, 806 n. 20 (1965).

[101] *See* United States v. Cruikshank, 92 U.S. 542, 549 (1876); Anderson v. United States, 417 U.S. 211, 223 (1974) (Since conspiracy is the gravamen of an offense under section 241, the prosecution must show that the offender acted with specific intent to interfere with the Federal rights in question); United States v. Ellis, 595 F.2d 154, 161-62 (3rd Cir. 1979), *cert. denied*, 444 U.S. 838 (1979).

[102] *Guarding the Guardians*, p. 113.

[103] Ibid., p. 114.

[104] Ibid., p. 134.

[105] Ibid., *see* United States v. City of Philadelphia, 644 F.2d 187 (3rd Cir. 1980) (later proceedings omitted).
The importance of the Philadelphia suit was noted by former Assistant Attorney General Drew S. Days III in prior testimony before the Commission:
"[A]ttorney General Bell and I concluded when we decided to file the Philadelphia case we were dealing with something that went beyond individual acts of misconduct. We were dealing with institutional problems...if an officer on the beat perceives that he or she is going to be shielded and protected by the institution from an investigation and from prosecutions, that the counsel is going to be provided, and even when damages are awarded that not the officer but the city is going to pay, then I think what we have is a situation where even prosecuting individual officers is not going to change the environment."
Guarding the Guardians, p. 135.

[106] *See* City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983) (plaintiff who had been subjected to an unjustified police chokehold lacked standing to seek injunctive relief prohibiting police department from engaging in chokehold practice).

[107] 42 U.S.C. §§ 2000, 2000a-5 (1988).

[108] *Police Brutality Hearings*, pp. 185-186 (statement of Drew S. Days III, Professor of Law, Yale Law School). *See also* 42 U.S.C. § 1997a(a) (1988).

proven patterns and practices of misconduct in a particular department.[109]

Equal Employment Opportunities for Latinos in the Metropolitan Police Department

The low number of Latinos in the MPD has been a matter of great concern to the District's Latino community.[110] The Commission found that the representation of Latinos in the MPD, particularly in supervisory and command positions, is disproportionate to Latino representation in the District's population. The MPD currently employs 4,589 sworn police officers and 871 civilian employees.[111] Seventy-one percent of civilian and sworn employees are black, 25 percent white, and 2.5 percent Latino.[112] The 120 Latinos who are sworn members of the force consist of 92 officers, 11 detectives, 12 sergeants, and 5 lieutenants. The department has no Latinos above the rank of lieutenant. There are more Hispanic employees within the MPD than any other agency under the Mayor's authority or any independent agency in the District government.[113]

There are 53 Hispanic officers actively working in the Third District, out of a total command of 487; and there are 31 Hispanics in the Fourth District, which has a total command of 453.[114] While the MPD experienced a 16.9 percent decline in the employment of black officers between 1983 and 1989, the employment of Hispanic officers increased 166.6 percent.[115] Since 1986 the MPD has hired 79 Hispanics as sworn personnel.[116] Despite signs of progress in the hiring of Latinos, greater efforts are still needed to increase their representation in the Department.

Latino Access to Police Services

The Commission's District of Columbia Advisory Committee in 1981 cited cultural and language barriers as a frequent source of difficulty in police-community relations in the District.[117] Such barriers may also contribute to the isolation and exclusion experienced by language-minority groups in the District, especially the large Spanish-speaking population.

The Commission found a manifest need for additional bilingual officers to serve the District's growing Spanish-speaking population. In July of 1991, the Department estimated that 126 of its officers spoke fluent Spanish.[118] Data provided by the Department indicated that the Third District (Adams Morgan area) has 55 (11 percent) bilingual officers and the Fourth District (Mount Pleasant area) has 31 (7 percent) bilingual officers.[119] Two Spanish-speaking officers are assigned to duty at the Third District station; however, they are not always available.[120] Spanish-speaking victims who report a crime at the Third District station may be sent to a police department community center because no Spanish-speaking officer is available.[121] In the words of one officer:

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[109] *Guarding the Guardians*, pp. 164-165; *Police Brutality Hearings*, p. 185 (statement of Drew S. Days III); American Civil Liberties Union, *On the Line: Police Brutality and its Remedies*, April 1991, p. 13.

[110] *See Latino Blueprint*, p. 22; *Latino Community Agenda*, p. 32.

[111] Metropolitan Police Department's response to Commission staff interrogatories, Jan. 13, 1992 (hereafter MPD Response).

[112] MPD Response. U.S. citizenship is an eligibility requirement for appointment as a member of the MPD. D.C. Municipal Regulations, Title 6A, § 103.8 (1988).

[113] D.C. Office of Personnel, Hispanic Employment Program, *Hispanic Employees in District Government by Agency* (May 6, 1991).

[114] Delivery of Services to Latino Residents, p. 16; *see also* Fulwood Testimony, *Hearing Transcript*, vol. 2, p. 179.

[115] Samuel Walker, "Employment of Black and Hispanic Police Officers, 1983-1988: A Follow-up Study," *Occasional Paper* (Center for Applied Urban Research: February 1989), pp. 3-5. Hispanics remain underrepresented in urban police departments throughout the country, such as the Chicago Police Department, where Hispanics are 20 percent of the city's population and only 7.41 percent of the police department. Similarly, Los Angeles, which is 40 percent Hispanic, has a police force which is only 22.09 percent Hispanic. New York City, with a population that is 24.4 percent Hispanic, has a police force that is 13.5 percent Hispanic. Melita Marie Garza, "Hispanics Still Underrepresented on Nation's Police Forces," *Chicago Tribune*, June 28, 1992, p. 4.

[116] Information submitted by the Office of Corporation Counsel, District of Columbia, Mar. 31, 1992

[117] District of Columbia Advisory Committee, *Police-Community Relations in Washington, D.C.* (June 1981), p. 3.

[118] Hogan & Hartson and American Civil Liberties Union, *Language Barrier Problems in the Hispanic Community's Contacts with the Metropolitan Police Department and the District of Columbia's Court System*, report prepared for the D.C. Latino Civil Rights Task Force, 1991, p. 10.

[119] Delivery of Services to Latino Residents, p. 16.

> So every time they had a problem with a Hispanic that they felt that they needed some type of interpretation, you have to take a car out of service, send them to pick us up, bring us to Columbia Road, we interpret, and dump us back to the area where we were not even needed. And sometimes, we had only one officer working and nobody—Like they said that, "you always have a Hispanic in the police station." That's wrong. You don't. Only at night time, right now, because during the day, you don't have a Hispanic at the station.[122]

The Commission received testimony that officers hear daily requests for the assistance of a bilingual officer over the police radio.[123] Bilingual officers at the Community Center in the Third District were called about twice a day to provide assistance in traffic accidents involving Spanish-speaking persons because no Spanish-speaking officer was available at the Third District.[124] However, since the Community Center's officers are not issued patrol cars, Spanish-speaking persons involved in traffic accidents had to wait until someone drove to the Community Center, picked up the bilingual officer, then drove him to the scene of the accident.[125] Bilingual officers also are called to the Third District station to inform arrestees of their rights in Spanish.[126]

The Third District's Community Center has four Hispanic officers who speak Spanish.[127] However, the Community Center is only open 16 hours a day.[128] Deputy Chief Soulsby explained what happens in those instances when the center is closed and a Spanish-speaking officer is needed:

> If the Center is closed, in all likelihood there's an [Spanish-speaking] officer working. If there's no officer working in the Third District, which is very, very seldom, then they would call the Communications Division and if necessary have an officer respond from another district; either talk to them over the phone or respond to the scene.[129]

After the Commission hearing, the MPD opened a Fourth District bilingual police community center at 14th and Irving Streets, N.W.[130]

The Commission received information that Spanish-speaking victims do not have equal access to police services. The need for additional bilingual officers to meet the present demand is well documented. Until recently, the Communications Division, which operates the 911 emergency number, had only 4 or 5 bilingual personnel,[131] out of 130 police operators,[132] despite the need for more. In July 1992, a Spanish-speaking rape victim tried to report her attack to the MPD by dialing 911, but the police operators reportedly hung up on her three times.[133] Subsequent to the incident, the MPD subscribed to a telephonic language interpreter service and hired nine Latino bilingual operators.[134] Since the Commission hearing, the MPD has also hired and is currently training eight Latinos as police dispatchers. The Department also contracted with a language interpreter service to assist dispatchers.[135]

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[120] Officer Moises Aristy, Third District Community Center, Metropolitan Police Department, interview in Washington, D.C., Dec. 27, 1991.

[121] Ibid., *see also* Officer Moises Aristy, Third District Community Center, Metropolitan Police Department, testimony, vol. 2, pp. 165.

[122] Espinal Testimony, *Hearing Transcript*, vol. 2, pp. 524-25.

[123] Aristy Testimony, *Hearing Transcript*, vol. 2, p. 169.

[124] Ibid., pp. 165-67.

[125] Ibid., p. 165.

[126] Ibid., p. 168.

[127] Ibid., p. 162.

[128] Soulsby Testimony, *Hearing Transcript*, vol. 2, p. 179.

[129] Ibid.

[130] Delivery of Services to Latino Residents, p. 15.

[131] Officer Carlos Guerra, President, Hispanic Police Association, interview in Washington, D.C., Nov. 7, 1991. The Commission also received information that the MPD assigns at least one bilingual operator to each shift. Delivery of Services to Latino Residents, p. 16.

[132] Avis Thomas-Lester and Patrice Gaines-Carter, "Suspect is Charged in Rape Case Marked By 911 Controversy," *Washington Post*, Aug. 2, 1992, p. B3.

Lack of fluent bilingual Spanish-speaking officers to respond to domestic violence cases has serious consequences for officers and victims, as discussed by the executive director of The Family Place in Washington, D.C.:

> There've been many instances where English-speaking officers have been put in the position of having to mediate in a family conflict and try to figure out what's the problem. . . . [A]s you can imagine, in domestic violence cases, there's a tremendous amount of confusion and fear and anger involved all at once. And to place a police officer who does not speak Spanish in that position is highly unfair to the officer, as well as it impedes completely the ability for him to be able to make a decision that is the safest decision, particularly for the children, because almost all these homes have children in them. . . . And, again, it erodes the trust of the woman for the legal system to protect her. But, also, it really decreases the chance that she will continue to seek help because the help is not adequate to encourage her to extricate herself from the violence.[136]

The daily demand for bilingual officers, as well as the Department's shortage of such officers to meet this demand efficiently and effectively, is clear. In an effort to address this growing need, 532 police officers have taken Spanish-language classes through the University of the District of Columbia and the MPD Training Division over the past 5 years.[137] While some officers have been relieved from duty to attend these classes, others have not because of manpower requirements at various districts.[138]

Since the Mount Pleasant hearing, the MPD has informed the Commission that a "Spanish for Patrol Officers" conversational course is being offered through the University of the District of Columbia.[139] The Department has also provided for some officers a Spanish-English dictionary entitled *Hispanic* [sic] *for the Patrol Officer.*[140] The MPD offers no incentives, however, to encourage officers to develop broader language skills. Such incentives were recommended by the Christopher Commission in its report on the Los Angeles Police Department.[141]

Recruitment

Previous U.S. Commission on Civil Rights studies concluded that serious underutilization of minorities in local law enforcement agencies hampers the ability of police departments to function effectively in and earn the respect of predominantly minority neighborhoods, thereby increasing the likelihood of tension and violence.[142] The MPD's efforts to recruit qualified Latino and bilingual officers has been ineffective and sporadic.

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[133] Ibid.

[134] Brian Reilly, "Police Hire Language Service for 911 Call," *The Washington Times*, Sept. 3, 1992, p. 1; Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992, attaching Response of D.C. Government Agencies to U.S. Commission on Civil Rights Draft Report, Oct. 27, 1992, p. 1.

[135] MPD Response to Draft Report, p. 13.

[136] Maria Elena Orrego, Executive Director, The Family Place, testimony, *Hearing Transcript*, vol. 1, pp. 263-64.

[137] Information submitted by Office of Corporation Counsel, District of Columbia, Mar. 31, 1992.

[138] MPD Response to Draft Report, p. 13.

[139] Delivery of Services to Latino Residents, p. 17.

[140] Insp. William White, Capt. Rosalind Parker, Lt. Bill Pittman, Police Training Academy, Metropolitan Police Department, interview in Washington, D.C., Dec. 4, 1991.

[141] Report of the Independent Commission on the Los Angeles Police Department (1991), p. 135.

[142] *Guarding the Guardians*, p. 5.

The Recruitment Branch used to have 40 (background) investigators, some of whom were Latino and detailed from other areas.[143] Prior to the Commission hearing, the Recruitment Branch had only seven investigators, none Latino.[144] Thus, significant barriers have existed to achieving increased representation of Latinos. Chief Fulwood explained:

> At this point in time we almost don't have a recruiting branch. As you're aware we haven't hired anybody since February [1991]. . . . But it's a small staff now just maintaining records until such time as we decide that we're going to hire again. Once that occurs, then we will obviously have Latinos assigned as investigators and recruiters.[145]

Subsequent to the Commission hearing, the MPD assigned two Latino officers to the Recruitment Branch.[146]

In an effort to recruit Hispanic officers, a targeted recruitment drive was conducted in San Juan, Puerto Rico, in the fall of 1985.[147] However, this drive yielded only 25 Hispanic new hires.[148] In 1985 Hispanic recruitment drives were also conducted in Miami, Florida, Hartford, Connecticut, and New York, New York.[149] In March of 1988, the D.C. Department of Employment Services (DOES) began advertisements of MPD monthly testing throughout the U.S. by way of job banks.[150] In May of 1988, DOES conducted a 1-day Hispanic Job Fair in the District, but this yielded a minimal response from the Hispanic community.[151] In October of 1988, another Hispanic recruitment drive was conducted in Puerto Rico.[152] Although 400 applicants were tested, only 26 Hispanics were hired.[153] As a result of an authorized increase in the police force and attrition, the MPD conducted a general recruitment drive in 1989 in which 1,200 people were hired.[154] General recruitment drives were conducted in Kentucky and Norfolk, Virginia, in 1990.[155]

Cities such as Chicago, Phoenix and Sacramento had been identified by the MPD as potential sites for Hispanic recruitment.[156] The MPD's recruitment team visited San Antonio and is studying the information obtained to determine the feasibility of recruiting there.[157] The MPD advertises on a monthly basis in the *Washington Post, Washington Times, Impacto*, and *El Pregonero* newspapers to announce monthly walk-in examinations.[158] In addition, Spanish radio stations in the Washington metropolitan area have been utilized. Vacancy announcements for the position of police officer have been advertised in publications nationwide in Spanish and English.[159]

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[143] Capt. Glen Hoppert and Lt. George Shaw, Recruitment Branch, Metropolitan Police Department, interview in Washington, D.C., Dec. 20, 1991 (hereafter Hoppert and Shaw Interview).

[144] Ibid.

[145] Fulwood testimony, *Hearing Transcript*, vol. 2, p. 136. However, police departments in cities such as Philadelphia and Baltimore have been able to make significant progress in the employment of minorities even when their departments shrank in size. *Employment of Black and Hispanic Officers*, p. 7.

[146] MPD Response to Draft Report, p. 13.

[147] Hoppert and Shaw Interview; Internal Memorandum from Metropolitan Police Department Personnel Liaison Officer, Public Safety Cluster, to Administrative Services Officer, Administrative Services Bureau, Feb. 26, 1992, p. 1 (hereafter Personnel Liaison Office Memorandum).

[148] Personnel Liaison Memorandum p. 1.

[149] Ibid.

[150] Ibid.

[151] Ibid.; *see also* Fulwood Testimony, *Hearing Transcript*, vol. 2, p. 138.

[152] Personnel Liaison Office Memorandum, p. 1.

[153] Ibid.

[154] Hoppert and Shaw Interview.

[155] Ibid.

[156] Ibid., p. 2.

[157] Ibid.

The MPD has been criticized for its Hispanic hiring tactics, such as costly recruitment trips to Puerto Rico rather than enhanced recruitment efforts in the Washington, D.C., area.[160] The Puerto Rico recruitment drives have also been criticized for yielding some officers, formerly employed with Puerto Rico police departments, who generated a number of citizen complaints and were abusive to Latinos.[161] Chief Fulwood described these targeted recruitment drives and the need for improvement:

> We've sent people as far away as Puerto Rico. We've sent them to other states in the United States to try to attract Latinos to the community. I've met with community people, community leadership, to see how we can do it better. I think we need to set some realistic goals and timetables to increase the number of Latino persons that are in law enforcement as a career.[162]

The only recruitment materials developed by the Recruitment Branch consist of a folder containing basic information on salary, benefits, entry requirements, and a personal history form (which requires citizenship information).[163] A study guide that was provided at one time to assist applicants in preparing for the police entrance exam is no longer available.[164] Moreover, multilingual recruitment materials are not available from the MPD.[165] The former director of the MPD's Special Emphasis Program used to organize voluntary preparatory classes and provide tutoring for police exams on his own time and not as part of any official MPD program.[166] The classes were held in the Latino community and attended by 50-60 persons.[167] The tutoring helped Latino candidates pass the police entrance exam.[168]

Since the Commission hearing, the MPD has indicated that efforts are underway to recruit and select candidates to fill the Department's 283 vacancies for sworn personnel.[169] Of the 2,041 candidates on the Department's registers, only 45 are Hispanic.[170] The

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[158] Ibid.

[159] Ibid.

[160] Criminal Justice Newsletter, Jan. 16, 1986, p. 3; Officer Carlos Guerra, President, Hispanic Police Officers Association, testimony, *Hearing Transcript*, vol. 2, p. 509.

[161] Detective Richard N. Espinosa, former secretary of the Hispanic Police Association, Metropolitan Police Department, interview in Washington, D.C., Nov. 14, 1991; Insp. Winfred L. Stanley, Internal Affairs Division, Metropolitan Police Department, interview in Washington, D.C., Nov. 7, 1991; Bobby Pittman, Vice President, Citizens Advisory Council for the Metropolitan Police Department, Third District, interview in Washington, D.C., Dec. 26, 1991; Daniel Flores, retired Inspector and Director of Special Emphasis Program, Metropolitan Police Department, interview in Washington, D.C., Nov. 20, 1991 (hereafter Flores Interview); Edward Spurlock, retired Deputy Chief, Third District, Metropolitan Police Department, interview in Washington, D.C., Jan. 22, 1992; Father Jose Somoza, Our Lady Queen of Americas, member of the Advisory Board to the Chief of Police, interview in Washington, D.C., Dec. 17, 1991; Milanes Testimony, *Hearing Transcript*, vol. 2, p. 22.

[162] Fulwood Testimony, *Hearing Transcript*, vol. 2, p. 138.

[163] Hoppert and Shaw Interview.

[164] Ibid.

[165] Ibid.

[166] Flores Interview.

[167] Ibid.

[168] Ibid.

[169] Information submitted by the Office of the Corporation Counsel, District of Columbia, Mar. 31, 1992.

[170] Ibid.

MPD is considering the establishment of a special certification list that would allow hiring all of the qualified Hispanic applicants within the system.[171] The MPD also recently informed the Commission that it is planning to administer a special entrance examination for bilingual persons only and expects to test approximately 350 persons at that time.[172]

The MPD does not utilize special programs being used by other large urban police departments to recruit disadvantaged or minority groups. For example, police departments in Chicago, Detroit, and Los Angeles operate storefront centers in the city for police recruitment information and examination purposes.[173] Similarly, departments in Detroit, New York, and Philadelphia keep information offices open after regular business hours and on weekends.[174] Preexamination counseling and training are other special programs used by departments in Chicago, Los Angeles, New York, and Philadelphia.[175]

Standards established by the Commission on Accreditation for Law Enforcement agencies require all departments with 50 or more full-time personnel to include the active participation of minority personnel, fluent in the community's languages and aware of the cultural environment in recruitment activities whenever possible.[176] The accreditation commission reasoned that placing minority personnel and women, especially those of supervisory ranks, in recruitment positions, along with using multilingual recruitment materials, can demonstrate a department's commitment to the minority community, demonstrate minority promotability, and increase the potential for recruiting minority personnel, among other things.[177]

The standards also require a comprehensive written recruitment plan with measurable recruitment objectives, including actual and forecast vacancies, a timetable for recruitment activities, an itemized recruitment budget, and procedures for obtaining the assistance of community organizations.[178] However, the MPD has not established such a recruitment plan for the hiring of Latinos and other underrepresented minorities.

Cadet Program

A successful cadet training program is an essential and efficient part of ongoing recruitment activities because it provides police departments with a steady source of potential officers from the community they serve. Begun in 1987, the Cadet Program for 12th-grade students offers a $9,000 per year salary and benefits package, and specialized education and training at the University of the District of Columbia and the Training Academy, leading to early officer status at age 20.[179] Since the program does not have citizenship requirements, young people lacking citizenship can complete their citizenship requirements during their tenure as cadets.[180]

Citing the program's success in attracting students to a career in law enforcement, Chief Fulwood provided an example of how the program assisted a noncitizen Mexican cadet in completing both her citizenship and cadet requirements, eventually leading to her appointment as an MPD officer.[181] However, the president of the Hispanic Police Officer's Association testified that the MPD has not succeeded in recruiting a large number of Hispanic cadets from high schools.[182] Subsequent to the Commission hearing, the MPD indicated that it is conducting outreach through the schools and Latino community organizations to encourage Latino students to participate in the police cadet program.[183]

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[171] Ibid.

[172] MPD Response to Draft Report, p. 12.

[173] *The Big Six: Policing America's Largest Cities* (Police Foundation 1991), p. 71 (hereafter *The Big Six*).

[174] Ibid.

[175] Ibid.

[176] *Standards Manual*, Standard 31.1.6 (May 1987).

[177] Ibid., comment.

[178] Ibid., Standard 31.4.1.

[179] MPD Cadet Training Program materials; *see also* D.C. Code Ann. § 4-107.1 (1988).

[180] Delivery of Services to Latino Residents, p. 16.

[181] Fulwood Testimony, *Hearing Transcript*, vol. 2, p. 192.

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[182] Guerra Testimony, *Hearing Transcript*, vol. 2, p. 507.

[183] Delivery of Services to Latino Residents, p. 16.

Chapter 4. Civilian Oversight of Policing

The inability of the District of Columbia's Civilian Complaint Review Board (CCRB) to investigate and process citizen complaints of police misconduct in an expeditious manner has contributed to strained relations between the Latino community and the Metropolitan Police Department, according to the D.C. Latino Civil Rights Task Force.[1] Despite bilingual assistance during the entire complaint process,[2] Latinos, as well as other complainants, who may be victims of excessive force, harassment, or demeaning language are discouraged by having to wait up to 2 years for a hearing.[3]

The Commission undertook an investigation of civilian oversight of policing, since an efficient and equitable system for the receipt, investigation, and disposition of citizen complaints of police misconduct is crucial in the control or discipline of police officers and is a significant factor in fostering harmonious police-community relations. The Commission found that the District of Columbia's Civilian Complaint Review Board suffers from a serious shortage of funds and investigative staff, which have contributed to the critical backlog of police misconduct cases. Moreover, the operation of police trial boards in the review of citizen complaints has undermined the principles of civilian review, which include impartiality, independence, and representativeness of the community.

History and Structure of the Civilian Complaint Review Board

In 1982 the District of Columbia's Civilian Complaint Review Board became operational under the Civilian Complaint Review Board Act of 1980.[4] The purpose of the act was "to address longstanding concern in the District of Columbia regarding the incidence of citizen complaints alleging police misconduct and the lack of impartiality and public participation in the review of these complaints."[5]

Prior to the Board's establishment, citizens' complaints against the police were investigated by the Internal Affairs Division (IAD) of the Metropolitan Police Department (MPD). A 1979 statistical study by the MPD of citizen complaints filed through the use of PD 99 (citizen complaint) forms had revealed that during a 58-month period, from 1975 to mid-1979, 1,888 citizen complaints were filed.[6] When processed by IAD, the Department classified 92 percent of the citizen complaints as unfounded and took no action against those officers.[7] In the remaining 8 percent of the cases, the remedial action ranged from counseling to a letter of reprimand from the Chief.[8]

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[1] *See* D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action, Final Recommendations to the District of Columbia Government*, October 1991, p. 19 (hereafter *The Latino Blueprint*).

[2] Informational brochures, citizen complaint forms, notice to complainants, notice of public forums and notice of dismissals (where appropriate) are available in Spanish. Of its limited staff, the CCRB has two Spanish-speaking investigators and one Spanish-speaking paralegal to assist Spanish-speaking complainants in filing their complaints. Moreover, Spanish-speaking interpreters are available for hearings. The CCRB has also conducted public forums in Ward 1 and other wards regarding the processing of police misconduct complaints. Information submitted by Civilian Complaint Review Board in response to Commission staff production request, Oct. 18, 1991; *see also* Hogan & Hartson and the American Civil Liberties Union, *Language Barrier Problems in the Hispanic Community's Contacts with the Metropolitan Police Department and the District of Columbia's Court System*, report prepared for the Latino Civil Rights Task Force, 1991, pp. 20-23.

[3] *The Latino Blueprint*, p. 19.

[4] *See* Memorandum from the D.C. Council, Committee on the Judiciary, David A. Clarke, Chairperson, to Members of the Council of the District of Columbia, Sept. 10, 1980, p. 5 (discussing Bill No. 3-247, the "Civilian Complaint Review Board Act of 1980") (hereafter *Bill No. 3-247 Memorandum*). Bill No. 3-247 was introduced by Councilmember Wilhelmina Rolark at the request of Mayor Marion Barry, Jr., on Jan. 23, 1980, and was cosponsored by Councilmembers David A. Clarke, Hilda H.M. Mason, Charlene Drew Jarvis, and John Ray. *See also* Civilian Complaint Review Board Act of 1980, D.C. Law 3-158, D.C. Code Ann. §§ 4-901-911 (1988).

A report of the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights cited the need for a civilian review board on the grounds that the existing system by which the police investigated complaints against the police suggested fundamental inequity and conflict of interest. District of Columbia Advisory Committee, *Police-Community Relations in Washington, D.C.* (June 1981), p. 11.

[5] *Bill No. 3-247 Memorandum*, p. 3.

Public involvement in the citizen complaint process was supported by a majority of those testifying at the joint hearings on the legislation because internal police procedures are viewed with suspicion and police misconduct was a matter of public concern, not merely individual grievances.[9] The legislation shifted the initial responsibility for reviewing citizen complaints of police harassment, excessive use of force, and demeaning language from within the MPD to a Civilian Complaint Review Board.[10]

Under D.C. law, the Board has jurisdiction to make findings and recommendations pursuant to citizen complaints involving MPD officers, as well as Special Police employed by the D.C. Government, that allege one or more of the following: (1) police harassment; (2) excessive use of force; or (3) use of language likely to demean the inherent dignity of any person to whom it was directed and to trigger disrespect for law enforcement officers.[11] These types of complaints cover a broad range of improper police actions against the public.[12] Police harassment, for example, according to the statute's legislative history, includes both physical and verbal harassment.[13] Moreover, the law covers acts that are intended to bother, annoy, or otherwise interfere with another person's freedom to go about his or her lawful business normally.[14]

Complaints of excessive force are not limited to instances involving serious bodily injury but rather require a careful consideration of the force used in the context of the situation.[15] Demeaning language refers to a broad category of offensive language, including racially prejudicial remarks, ethnic or religious slurs, and sexual allusions.[16] Improper remarks made in the presence of a person are considered as being directed towards that person.[17] By law and departmental orders, the Metropolitan Police Department may not handle these types of complaints and must refer them to the CCRB.[18]

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[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid., p. 4. The Civilian Complaint Review Board must maintain an official record of all complaint proceedings, which must be available to the public. D.C. Code Ann. § 4-903(c) (1988).

[10] *Bill 3-247 Memorandum*, p. 5.

[11] D.C. Code Ann. § 4-901(b)-(c) (1988).

[12] *Bill No. 3-247 Memorandum*, p. 9.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] *See* D.C. Code Ann. § 4-909(c) (1988); Metropolitan Police Department Operational Handbook, Special Order No. 87.8 (effective Mar. 6, 1987).

From 1982 to 1992, the CCRB was composed of a chairperson and six other members, who must be D.C. residents and representative of the District's population.[19] The Board has three members appointed by the Mayor, including the chairperson, two appointed by the D.C. Council, one police officer appointed by the Chief of Police, and one police officer appointed by the Fraternal Order of Police.[20] Effective October 1, 1992, new legislation passed by the D.C. Council increases the number of Board members from 7 to 21, in an effort to decrease a critical backlog of 1,000 police misconduct cases.[21] The new Board will consist of 19 civilians, 2 police members, and 4 police alternate members.[22]

The Board must employ an executive director and professional and investigative staff as authorized by appropriations.[23] Although authorized to have 17 positions, the CCRB in FY 1992 had only 12 staff, including 3 investigators and 1 supervising investigator, due to budgetary constraints.[24]

Problems with the Current System

Backlog of Cases

The Civilian Complaint Review Board has been most criticized for its backlog of cases. Since its inception in 1982, over 3,000 complaints have been filed.[25] In the first 2 years of the Board's operation, the number of complaints filed rapidly outpaced the Board's ability to hear them.[26] Commission staff examined citizen complaint data from the CCRB in order to determine three basic measures of performance: case backlog, time to close cases, and complaint outcomes. At the end of FY 1991, one-third of the complaints (875 out of a total of 2,587) received since 1985 remained open. Despite improvements undertaken in 1990-91,[27] the CCRB still requires more than a year to close most cases.[28] In 1991 the median time to close a case was 402 days, and 25 percent of

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[19] D.C. Code Ann. § 4-904(a)-(b) (1988). Bill 9-591, passed by the D.C. Council on July 7, 1992, and effective on Oct. 1, 1992, increases the number of Board members from 7 to 21.

[20] *Id.* §§ 4-904(c)-(e).

[21] Under the new legislation, an additional 14 civilian members will be appointed to the Board (the Mayor and D.C. Council will each appoint 7 members) for a period not to exceed 3 years from the effective date of the act. The Chief of Police and the police union each will appoint two alternates. *See* Civilian Complaint Review Board Emergency Amendment Act of 1992, D.C. Act 9-274 (to be codified at D.C. Code Ann. §§ 4-904-908) (hereafter CCRB Emergency Amendment Act of 1992).

[22] CCRB Emergency Amendment Act of 1992.

[23] D.C. Code Ann. §4-907(a) (1988). The executive director and staff are employees of the D.C. Government.

[24] Alfreda Davis Porter, Executive Director, CCRB, testimony, *Hearing Before the U.S. Commission on Civil Rights,* Wash. D.C., Jan. 29-31, 1992, vol. 2, pp. 208-209, 211 (hereafter *Hearing Transcript*).

[25] Fiscal Year 1992 District of Columbia Operating Budget, p. FH-3.

[26] Ibid.

[27] In response to Mayor Marion Barry's mandate to develop a proposal to eliminate the backlog of cases and improve the manner in which the Board processed incoming cases, the Board proposed amendments to the CCRB's enabling legislation in 1988. The proposal called for an expansion of the Board and allowed for the Board to meet in panels of five members, composed of three citizens and two members of the Metropolitan Police Department. In addition, the proposal permitted the Board to process cases more expeditiously through the creation of conciliation conferences. However, the bill, the Civilian Complaint Review Board Reestablishment Amendment Act of 1988, died in the Judiciary Committee of the D.C. Council. The CCRB did, however, implement some of their recommendations, including the development of a case tracking system, establishment of case intake procedures, and adoption of an accelerated hearing schedule which reduced the backlog by almost 30 percent for fiscal years 1991 and 1990. *See* Memorandum from Kemi Morton, Chairperson, Civilian Complaint Review Board, thru Tina Smith, Director, OSS, thru Herbert Reid, Acting Chief of Staff, to Mayor Marion Barry, Jr., May 23, 1988; Memorandum from Alfreda Davis Porter, Executive Director, to Board Members, Civilian Complaint Review Board, Dec. 11, 1991.

[28] Absent unusual circumstances, as determined by the Board, investigations must be completed within ninety days. D.C. Mun. Regs. tit. 6A, § 2105.2 (1988).

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TABLE 4.1
Time to Close CCRB Cases: FY 1991*
(time in days)

Priority	Median	75th pctl	Mean	No.
1	894	1,302	931	69
2	781	1,302	814	54
3	557	856	644	42
4	100	209	150	89

* Median—50 percent of complaints closed in time indicated or longer.
75th pctl—25 percent closed in time indicated or longer.
Mean—average time to close case.

the cases required more than 3 years to close (see table 4.1).[29] For cases closed during FY 1990, the median was 665 days and the 75th percentile was 1,213 days.[30]

As part of its case tracking system, the CCRB classifies its cases by type. "Priority 1" designated cases are excessive force cases with documented injuries. "Priority 2" indicates excessive force cases without medical records. Approximately 80 percent of the CCRB's cases involve allegations of excessive force, and at least 45 percent of those cases involve documented injuries, according to the CCRB's executive director.[31] "Priority 3" indicates language and/or harassment cases. "Priority 4" indicates those cases that the Board should review for possible dismissal (cases, for example, in which it appears that the Board lacks jurisdiction over the subject matter of the complaint). As one might expect, Priority 1 or 2 cases (most serious cases involving excessive force) required significantly more time to complete than Priority 3 (language or harassment cases), and Priority 4 cases (cases to be dismissed) took the least amount of time to process. Half of all Priority 1 and 2 cases closed in FY 1991 took more than 2 years to close: 25 percent of these cases were closed in more than 3.5 years.

Commission staff reviewed a sampling of use of force cases closed in 1991 to assess the average time interval between the date of incident and filing of complaint, complainant interview, assignment of case to investigator, and occurrence witness interviewed. Generally, a complaint is filed within 2.5 weeks after the incident, and the complainant is interviewed shortly thereafter. However, it can take a year from the time a complaint is filed for a case to be assigned to an investigator or for an occurrence witness to be interviewed.

Apart from administrative closures,[32] there are three basic ways the CCRB can close a case: sustain, not sustain, or dismiss each of the complainant's allegations.[33] Commission staff analysis revealed that the majority of CCRB cases are dismissed. In addition, very few cases are sustained by the CCRB. The sustain rate is 4 to 5 percent for harassment and force allegations and 9 percent for language allegations.[34]

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[29] A hearing must be conducted within 90 days of the filing of the complaint, unless a continuance is requested not less than 5 days before the scheduled hearing. D.C. Mun. Regs. tit. 6A, § 2113.1 (1988). In general, the CCRB must take final action on complaints within 120 days of its receipt, absent extraordinary circumstances. *Id.* § 2114.1.

[30] CCRB staff undertook a concerted effort during FY 1990 to clear the case backlog of aged cases. Consequently, processing times in this year and the improvements between 1990 and 1991 are somewhat inflated.

[31] Porter Testimony, *Hearing Transcript*, vol. 2, p. 208.

[32] The Board, after review of the investigative report, the complaint, and all other materials submitted, may dismiss a complaint by majority vote without holding a hearing if the Board determines the complaint is frivolous. Moreover, the Board may dismiss a complaint where it lacks jurisdiction. D.C. Mun. Regs. tit. 6A, § 2115.1 (1988). In practice, the Board also may summarily dismiss a case for want of prosecution, such as when the complainant fails to cooperate or has requested that a complaint be withdrawn, or where the CCRB staff is unable to locate the complainant.

[33] *See* table 4.2: Disposition of Complaints by Type of Allegation (calculations exclude cases that are referred to the MPD or the U.S. attorney's office for action). The Board must decide by a preponderance of the evidence whether each allegation in the complaint should be sustained, or dismissed, or found to evidence misconduct not directly related to the complaint but within the Board's authority. D.C. Code Ann. § 4-905(b) (1988); D.C. Mun. Regs. tit. 6A, §§ 2116.2 - .3 (1988).

[34] These percentages were based on the number of complaints containing a specific type of allegation (i.e., harassment, excessive force, or demeaning language) for which a determination had been made. The percentage of CCRB cases in which at least one allegation was sustained was 6.5 percent. This includes only complaints for which the CCRB had made a final determination (i.e., to dismiss, sustain, or not

TABLE 4.2
Disposition of Complaints by Type of Allegation and Percentage of Allegation Type

Type/outcome	Dismissed	Not sustained	Sustained	Total
Use of force	511	130	35	676
	75.6%	19.2%	5.2%	100%
Harassment	505	95	24	646
	80.9%	15.2%	3.9%	100%
Language	299	84	39	422
	70.9%	19.9%	9.2%	100%

During fiscal year 1991, the Civilian Complaint Review Board heard 64 cases involving 64 subject police officers and 142 allegations of misconduct.[35] The Board sustained at least a single allegation in 17 cases (26 percent of those heard), sustained no allegations in 19 cases (30 percent), and dismissed all allegations at the hearing level in 23 cases (36 percent).[36] Allegations of excessive force were sustained in nine cases.[37] Although the CCRB's sustain rate on citizen complaints appears similar to the MPD's rate,[38] the CCRB asserts that the comparison is misleading. The CCRB notes that the sustain rate overlooks those cases that may have been meritorious but that, for any number of reasons, could not be adjudicated through a full evidentiary hearing. With adequate resources to investigate and process all complaints in an expeditious manner, the sustain rate probably would be higher. By contrast, the CCRB asserts that cases closed by the MPD have in most instances been investigated and have been determined to lack merit.[39]

In July 1992, legislation was enacted to enhance both the efficiency and effectiveness of the CCRB.[40] For example, the legislation expands the number of Board members from 7 to 21 and permits it to set up three separate hearing panels in order to move more quickly through the backlog of complaints.[41] The new law also permits the CCRB to render summary adjudications, thus correcting another flaw in the 1980 act. Because it required a hearing in all but frivolous cases, the enabling statute forced the Board to give the same level of attention to all cases, regardless of the seriousness of allegations.[42] Even in cases where there was a complete investigation and a full record, and little additional information could be gleaned from a full hearing, the CCRB was not able to dispose summarily of or adjudicate these cases in a more timely and cost-effective manner.[43]

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sustain).

[35] Cases involving Third District officers were heard most often. More specifically, Third District officers were involved in 18 hearings, of which 7 were sustained. Memorandum from Curtis Pearson, Chief of Investigations, to Alfreda Davis Porter, Executive Director, Oct. 4, 1991.

[36] Ibid. As of the date of the memorandum, the Board had not yet voted on five cases.

[37] Ibid.

[38] *See* information submitted by the Office of the Corporation Counsel, District of Columbia Government, Mar. 31, 1992.

[39] Information submitted by the Civilian Complaint Review Board, Oct. 28, 1992.

[40] CCRB Emergency Amendment Act of 1992.

[41] The Board may act in seven-member panels. Each panel must include five civilian members, one police union member, and one MPD member. CCRB Emergency Amendment Act of 1992.

[42] *See* Porter Testimony, *Hearing Transcript*, vol. 2, p. 205.

The new law will also allow the Board to provide conciliation as an alternative form of complaint resolution.[44] This is also a means of reducing the case backlog.[45] The CCRB executive director told the Commission:

> Many times when we bring a case to hearing we hear a citizen say, "The only thing that I wanted was an apology from the officer." That does not serve the Board well to have expended that time when there are still very serious cases in the caseload.[46]

Where efforts to conciliate a complaint have been unsuccessful, a full investigation of the complaint must be conducted.[47] In addition, the new law empowers the CCRB to compel officers to give prehearing sworn statements.[48]

Although this legislation will be very helpful, the Board's ability to eliminate the backlog of cases completely will remain hampered. The CCRB executive director testified:

> The Board has been chronically understaffed and underfunded from its inception. When the Board first came into operation, the Board had three staff positions authorized; that was an executive director, one investigator, and one secretary. Within the first 6 months of operation, the Board received over 215 complaints and had three staff persons with which to deal with those complaints. Previously, the Metropolitan Police Department had a greater number of resources to deal with a similar number of complaints. The Internal Affairs Unit of the Police Department was one such entity and, in addition to those resources that were available, there were resources assigned in each of the police districts, which also handled incoming complaints. So you went from a very diverse and broad system to one in which three people were fully expected to carry a tremendous case load.[49]

Police officials agree that the CCRB was destined to fail with its inadequate funding and staff resources.[50] The CCRB's FY 1992 budget request was $874,000 with 17 full-time equivalent positions (FTE); while the Internal Affairs Division's (IAD) FY 1992 budget request was $2.634 million and 57 full-time positions.[51] The CCRB's FY 1993 approved budget is $1.430 million, with 24 authorized FTE positions, to include 2 investigative positions.[52] In addition, low grade levels for staff positions makes recruiting and retaining of qualified individuals difficult. CCRB Executive Director Porter testified:

> The difficulty is that our career ladder for investigators has been over the years reduced. The highest grade level that our investigators are able to obtain is a GS-9. That is simply not commensurate with the same level of investigative activity that would take place in the police department. It's usually the sergeant level or above. Our investigators all receive under $30,000 per year and most of them start out as a GS-5, which is around $16,000 to $17,000 a year. Clearly you are not able to attract the kind of qualified and competent individuals that you would need to undertake the very serious job of investigating allegations of excessive force and the like.[53]

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[43] Ibid., p. 217.

[44] CCRB Emergency Amendment Act of 1992.

[45] Porter Testimony, *Hearing Transcript*, vol. 2, p. 214.

[46] Ibid., p. 213.

[47] CCRB Emergency Amendment Act of 1992.

[48] *Id.*

[49] Porter Testimony, *Hearing Transcript*, vol. 2, p. 204. Compare the Chicago Office of Professional Standards which began in 1974 with a staff of about 40 members, which included investigators, supervisors, and administrators, and by 1985 the staff had doubled. International Association of Civilian Oversight of Law Enforcement (IACOLE), *USA Portion of International Compendium of Civilian Oversight Agencies* (1989), p. 67.

[50] Insp. Winfred L. Stanley, Metropolitan Police Department, Internal Affairs Division, interview in Washington, D.C., Nov. 7, 1991; Capt. Kim Dine, Metropolitan Police Department, CCRB Board member, interview in Washington, D.C., Nov. 15, 1991.

[51] Fiscal Year 1992 District of Columbia Operating Budget, pp. FH-2, FA-47.

[52] Information submitted by the Civilian Complaint Review Board, Oct. 28, 1992.

[53] Porter Testimony, *Hearing Transcript*, vol. 2, p. 207.

Consequently, during FY 1992, this minimal investigative staff had to process to disposition 325 citizen complaints requiring at a minimum: 900 interviews, 200 field investigations, 1,750 pieces of case-related correspondence, 1,000 subpoenas, 400 investigative reports, and approximately 100 hearings.[54] By contrast, the MPD's Internal Affairs Division employs 36 uniformed members (30 sergeants, 3 lieutenants, 2 captains, and 1 inspector), not including civilian personnel.[55] Critics have charged that, as a result of the CCRB's backlog, officers often retire prior to the Board's determination. Yet, this also happens within the MPD, even though it has a significantly larger staff to process cases. For example, between January 1, 1986, and June 1, 1991, out of 430 cases sent to a MPD adverse action panel with a recommendation for termination, 29 officers retired prior to the adverse action panel's determination.[56]

The CCRB's critical lack of investigative staffing hampers its ability to investigate all complaints of police misconduct in a timely manner. This diminishes the CCRB's ability to gather critical, time-sensitive information necessary for sustaining a complaint. At the Commission hearing, an MPD-appointed member of the Civilian Complaint Review Board testified:

> If you don't have critical information, which often means an immediate investigation exactly when the complaint is made photographs, pictures, the interviewing of witnesses, the canvassing of the neighborhood just as you would in any other crime. If you don't have that, you are not going to be able to sustain a case of misconduct and you're going to have really an evidentiary void down the road. It results in what we have now, a huge backlog where innocent officers are not being exonerated quickly enough. And the officers that require discipline or some kind of remedial action or training are also not getting that. The bottom line is it results in a very low rate of actually sustained cases as opposed to the number of complaints that are coming in.[57]

The CCRB's executive director also testified that timely and effective investigations can lead to early identification of systemic problems within a police department.[58] Another benefit of having a good civilian review process is that over time there should be a reduction in the number of civil suits that are filed against the Police Department.[59]

Police Trial Boards

By consistently overturning sustained findings of the CCRB, the operation of police trial boards in the review of citizen complaints of police misconduct have undermined the CCRB's effectiveness and the principles of civilian review.

The CCRB does not have the power to impose discipline. Its authority is merely to recommend action to be taken by the Chief of Police.[60] If the Chief of Police determines to take any action other than that recommended by the Board, the Chief must indicate in writing the recommended action and its reasons.[61] The findings and recommendations of the Board, together with the Chief's recommendations, must be transmitted to the Mayor who has 30 days either to: (1) uphold the Chief's recommendation; (2) impose the Board's recommendation; or (3) order a compromise between these recommendations.[62] Within 30 days of receipt of the Board's recommendations, the Chief must (1) implement or otherwise issue a final order with respect to such recommendations; or (2) refer the matter to a Police Trial Board.[63] When asked whether the CCRB's recommended discipline or penalties are in line with the Department's Table of Penalties, Chief Fulwood testified:

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[54] Fiscal Year 1992 District of Columbia Operating Budget, p. FH-3.

[55] Metropolitan Police Department's written response to Commission staff interrogatories, Jan. 23, 1992.

[56] Metropolitan Police Department's Adverse Action Reports, Jan. 1, 1986 through June 1, 1991.

[57] Capt. Kim Dine, Metropolitan Police Department, CCRB Board member, testimony, *Hearing Transcript*, vol. 2, p. 218.

[58] *See* Porter Testimony, *Hearing Transcript*, vol. 2, p. 269.

[59] Ibid.

[60] D.C. Code Ann. § 4-902(b) (1988); D.C. Mun. Regs. tit. 6A, § 2117.2 (1988).

[61] D.C. Code Ann. § 4-902(c) (1988).

[62] If the Mayor fails to act within the prescribed 30-day time period, the Chief's recommended action is deemed final. *Id.*

[63] Failure to act within 30 days is deemed final action by the Chief ratifying the Civilian Complaint Review Board's findings and recom-

> Most of the time we concur with their recommendations and implement those recommendations right away. I can't think of an individual case right now where I can tell you I disagreed with this and therefore the person should have been fired or not fired because there are times, obviously, when we're going to disagree. . . . Most of the time when they recommend something it's appropriate.[64]

However, in cases in which the CCRB has recommended dismissal, the officer has a right to a Police Trial Board hearing prior to dismissal.[65]

The CCRB expressed concern over the outcome of such cases as early as 1986, as discussed in a memorandum from the then-executive director to the Mayor:

> Although nearly 40% of the cases which have gone to hearings before the [Civilian Complaint Review] Board have been sustained, very little personnel action has actually occurred. Most cases going to Trial Board have resulted in exoneration of the subject police officer or decisions in their favor or much lesser personnel action (CCRB has not been able to acquire definitive follow-up data in this area). Where the COP [Chief of Police] has ordered personnel action pursuant to his agreement with CCRB or as a result of the Mayor's action pursuant to the CCRB Act, most subject police officers have appealed to the Office of Employee Appeals (OEA). According to the information received by CCRB only a few subject police officers have received personnel action as a result of the existence of the CCRB. Some members of the public have expressed the fear that referral to Trial Board and appeals to OEA have frustrated the effect of CCRB sustained findings and CCRB recommendations for personnel action.[66]

Serious police misconduct cases that are sustained by the CCRB do not necessarily result in discipline of officers. As of March 20, 1990, out of 19 police misconduct cases that had been sustained by the CCRB and appealed to the Police Trial Board, the Police Trial Board had rendered a "not guilty" verdict in 17 cases, including in cases where the CCRB recommended dismissal of the officer.[67] In another case sustained by the CCRB, the Police Trial Board's verdict resulted in admonishing one of the officers and dismissing charges against the remaining three officers.[68] The following case is indicative of how a Police Trial Board, composed entirely of police officers, can render findings with a significantly different version of events than the CCRB.

The CCRB sustained a case brought by two Latino men involving excessive force, harassment, and demeaning language on the part of Fourth District officers.[69] The CCRB's disciplinary recommendations included: termination for one respondent officer and 30 days suspension without opportunity to recoup loss for three other officers. The CCRB also recommended that the Chief of Police investigate improper use of a canine and refer an officer not named in the original complaint to a Trial Board for neglect of duty. The CCRB's findings of fact include:

> On Saturday, September 24, 1983, at approximately 1:00 a.m., the police were called to the Sacred Heart Church at 16th and Park Road, N.W. to investigate a stabbing. [Complainant 1], who had been stabbed, attempted to point out his assailant. [Complainant 1], who was shirtless at some point, was running around, agitated and screaming in Spanish in his attempt to point out his assailant. Subject Sergeant decided to arrest [Complainant 1]. During the arrest, Subject Police Officer and another officer held [Com-

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mendations, after which an aggrieved officer can exercise any right of review provided by law. *Id.*

[64] Chief Isaac Fulwood, Jr., Metropolitan Police Department, testimony, *Hearing Transcript*, vol. 2, p. 133.

[65] D.C. Code Ann. § 4-902(c) (1988).

[66] Memorandum from Lucy R. Edwards, Executive Director, to Mayor Marion Barry, Jr., July 21, 1986.

[67] Memorandum from Alfreda Davis Porter, Executive Director, to Civilian Complaint Review Board, March 20, 1990. The findings of a trial board are final and conclusive unless a written appeal is made to the Mayor, who has the power to reduce or modify the findings and penalty, or remand the case to a police trial board for further proceedings. D.C. Code Ann. § 4-118 (1988); D.C. Mun. Regs. tit. 6A, § 1001.3 (1988). Upon receipt of the trial board's findings and recommendations, and no appeal to the Mayor has been made, the Chief of Police may either confirm the findings and penalty, reduce the penalty, or may void the board's proceedings and refer the case to another trial board. D.C. Mun. Regs. tit. 6A, § 1001.5 (1988).

[68] Memorandum from Alfreda Davis Porter, Executive Director, CCRB, to Civilian Complaint Review Board, Mar. 20, 1990.

[69] Report of Findings of the Civilian Complaint Review Board, heard Dec. 4, 1984, Complaint No. 83-246.

> plainant 1] by his arms. When [Complainant 1] in his agitated state struggled and pulled free of a subject officer, he was hit in the head twice with a blackjack by the sergeant while a Subject officer held on to his other arm. He was then handcuffed, beaten by the officers and placed in a patrol car. He was called a "Hispanic mother******" and other derogatory terms by the officers. [Complainant 2] responded to a remark made by the Sergeant referring to the people present as Mexican-Americans. Following a verbal exchange, the [Complainant 2] was grabbed by the sergeant and placed under arrest. During the arrest the [Complainant 2] was hit in the face by the sergeant a number of times, drawing blood. The sergeant said to [Complainant 2] "welcome to America, mother-******* wetback," and then he placed him in the police car with [Complainant 1].
>
> During the arrests, a crowd gathered. The sergeant took a shotgun from his car and ordered the crowd to disperse. A canine officer with a police dog also confronted the crowd. A sponsor of the dance attempted to speak with the Sergeant about the Complainants' lack of involvement in any wrong-doing. He refused to speak with her. At the station, [Complainant 2] resisted placing his thumbprint on a card until he had an opportunity to read it. After unsuccessfully attempting to force [Complainant 2] to give his thumbprint, an officer grabbed him and put him in a cellblock where the officer said he would be sexually harassed if he did not give his thumbprint. After being released from the cell, given an opportunity to read the card and giving his thumbprint, [Complainant 2] requested the Sergeant's badge number. When [Complainant 2] objected to the number being written down incorrectly, an officer called him "son of a b****" and threw him against the wall. The officer hit [Complainant 2] while pushing him toward the lobby and out of the station. When [Complainant 2] refused to leave without his collateral receipt, the officer placed him in a headlock and dragged him into the street. The officer said "the next time you come in here you're mine, son of a b****." Subject Officer physically ejected [Complainant 2] from the station while directing threatening language toward him. He was assisted by two subject officers. Upon arrival at the station, [Complainant 1] requested medical assistance. His request was initially refused, but he was taken to the hospital after some delay.[70]

By contrast, the Police Trial Board's subsequent findings of fact include a significantly different version of the same events:

> Sergeant observed [Complainant 1] in a fight and saw him running off chasing people around at the Sacred Heart Church located at 16th & Park Rd., N.W. Fights broke out after a church dance. Officers arrested [Complainant 1] and brought him to the scout car. [Complainant 1] broke away from the officers and *lunged toward the sergeant in an attempt to attack or assault him. Sergeant, in an effort to protect himself and subdue [Complainant 1], struck him twice in the head with a blackjack*. Sergeant used his police radio to notify the dispatcher that "We have a problem with some fine Spanish-speaking citizens down here." Sergeant was approached by [Complainant 2] and made reference to the sergeant's choice of words on the radio to the effect of "now we are Mexican Americans." *Sergeant asked [Complainant 2] to leave three times or be subject to arrest for disorderly conduct. [Complainant 2] response was, "Man, mother f*****, I ain't going nowhere," and "mother f*****, lock me up."* The Sergeant arrested [Complainant 2] for disorderly conduct, walked him over to a police car and placed him against the hood of the car. [Complainant 2] was to be handcuffed by the sergeant when he reached around and *struck the Sergeant twice in the face*. The Sergeant, with his fist, struck [Complainant 2] once in the nose. [Complainant 2] sustained contusion to the nose and lower lip as the result of being struck by the Sergeant.
>
> No identification, testimony or evidence was presented to the Board to implicate other police officers in any wrong doing.[71]

In dismissing charges against three officers in this case, the Police Board based its decision in part on: Complainant 2 "admitted that he lied when it is to his benefit." In actuality, the complainant was cross-examined about his truthfulness in general, and he testified, "I do sometimes lie." When further questioned by the officer's attorney, "You do lie?" he replied, "Of course I do." When further cross-examined, "When it suits your purpose?" the complainant replied, "No, when I am put into situations. Everybody does. Didn't you lie when you were a kid?" The officer's attorney persisted, "But you do admit that you lie?" to which the complainant responded, "Like everybody else."[72] Fellow police officials were used as character witnesses for the accused officers. Unlike the complainant, the accused officers were represented by counsel and the Metropolitan Police Department was represented by Assistant Corporation

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[70] *Id.*

[71] Government of the District of Columbia, Metropolitan Police Department, Police Trial Board's Findings, Conclusions and Recommendations, hearings on June 30, 1986 and July 28, 1986, Case nos. 047-86, 050-86, 048-86, 049-86 (emphasis added).

Counsel. None of the accused officers was asked if he lied and cross-examined about his general truthfulness. In other sustained cases where a Police Trial Board hearing was held, the respondent officers' testimony and denials of misconduct were deemed more credible than those of the victims.[73]

A process for civilian review of citizen complaints against the police exists in 32 of the 50 largest cities.[74] However, most police departments in the country still utilize exclusively internal mechanisms for the investigation and resolution of citizen complaints.[75] Generally, internal mechanisms within police departments have been criticized for being both secretive and biased in favor of police officers and as inhibiting people from filing complaints.[76] Civilian review agencies vary greatly in terms of their structure, inherent power, and procedures, which makes comparative analysis difficult. For example, some civilian agencies conduct investigations and hearings. Other agencies review investigations conducted by sworn members of police departments and refer cases to police commissions for hearings.[77]

Existing U.S. civilian review agencies do not possess the power to impose discipline and can only recommend disciplinary actions to a police chief or police commission.[78] By contrast, Canadian civilian

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[72] *Id.*

[73] Police Trial Board Cases Nos. 046-86, 196-83. *See* Memorandum from Alfreda Davis Porter, Executive Director, to Civilian Complaint Review Board, Mar. 20, 1990.

[74] Walker and Bumphus, *Civilian Review of the Police: A National Survey of the 50 Largest Cities, 1991*, Focus: Criminal Justice Policy (1991), Additions and Corrections (February 1992) (hereafter *Civilian Review Survey*). The survey only studied agencies in the 50 largest cities. Civilian review agencies also exist in Rochester, NY; Hartford CT; Berkeley, CA; Flint, MI; San Diego County, CA; Dade County, FL; Virginia Beach, VA; and Seattle, WA; and in Canada, Australia, Europe and other locations. The trend towards civilian review has spread rapidly in recent years, with 12 civilian review agencies established since 1988. This trend represents a growing national consensus on civilian review as an appropriate method for handling citizen complaints of police misconduct. Civilian review may be defined as a procedure in which complaints about police misconduct are reviewed by persons who are not sworn members of a police department. *Ibid.*, p. 1. The International Association of Civilian Oversight of Law Enforcement (IACOLE) currently has 46 U.S. member agencies. Donald L. Casimere, President, International Association for Civilian Oversight of Law Enforcement (IACOLE), testimony, *Hearing Transcript*, vol. 2, p. 235.

[75] Donald L. Casimere, testimony, *Hearing Transcript*, vol. 2, p. 236. According to a 1987 survey of 101 police departments, a majority of those police departments operated internal mechanisms for investigating citizen complaints, most of which used an Internal Affairs Department or similar unit for such investigations. West, *PERF Investigation of Complaints Against the Police Survey* (Washington D.C.: Police Executive Research Forum 1987), pp. 5-6.

[76] Petterson, *Police Accountability and Civilian Oversight of Policing: An American Perspective*, in COMPLAINTS AGAINST THE POLICE (Oxford: Clarendon Press, 1991), pp. 262, 277-78 (hereafter *Police Accountability*); see also Terrill, *Alternative Perceptions of Independence in Civilian Oversight*, Journal of Police Science and Administration, 1990, p. 77; Terrill, *Complaint Procedures: Variations on the Theme of Civilian Participation*, Journal of Police Science and Administration, 1982, p. 399.

[77] A 1991 national survey of civilian review in the 50 largest cities classified review procedures according to: (1) who conducts the initial investigation of a citizen complaint; and (2) who reviews the investigative report and who makes a recommendations for action. Based on the above classifications, the survey identified three basic classes of civilian review agencies:

Class I-Initial investigation and factfinding by nonsworn personnel; review of investigative report and recommendation for action by nonsworn person or board consisting of majority of nonsworn persons. (Examples: District of Columbia's Civilian Complaint Review Board, San Francisco's Office of Citizens' Complaints, Cleveland's Police Review Board/Office of Professional Standards).

Class II-Initial investigation and factfinding by sworn officers; review of investigative report and recommendation for action by a nonsworn person or board consisting of a majority of nonsworn persons. (Examples: New York's Civilian Complaint Review Board, Houston's Civilian Review Committee, San Diego's Citizen Review Board).

Class III-Initial investigation and factfinding by sworn officers; review of investigative report and recommendation for action by sworn officers; opportunity for citizen to appeal final determination to a board including nonsworn persons. (Examples: Phoenix's Disciplinary Review Board, St. Louis Board of Commissioners, Omaha's Public Safety Finding Review Board).

Of the existing civilian review agencies in 32 of the 50 largest U.S. cities, 37.5 percent (12 agencies) can be categorized as Class I systems; 43.7 percent (14) are Class II system; 18.7 percent (6) are Class III. There is no pattern to the geographic distribution of civilian review procedures; nor is there any apparent relation to the racial composition of cities. Most civilian review agencies were established by city or county ordinance. *Ibid.*, pp. 1-2, app. In countries other than the U.S., agencies are established by provincial legislation (i.e., state legislation) or an act of parliament. *Police Accountability*, p. 269; Clare Lewis, Ontario Police Complaints Commissioner, former President of IACOLE, testimony, *Hearing Transcript*, vol. 2, p. 240.

review agencies, such as the Board of Inquiry in the province of Ontario[79] and the Police Ethics Committee in the province of Quebec, have the power to impose discipline.[80] Many civilian review agencies established in the 1950s and 1960s, including one in Washington, D.C., collapsed because they were advisory bodies only and lacked the power to impose discipline.[81] Without the authority to impose discipline, the review boards were unable to demand change and sufficiently perform their functions.[82]

Unlike the District of Columbia's civilian review process where CCRB findings and recommendations for discipline can be overturned unilaterally by the operation of police trial boards, Quebec's Police Ethics Committee (a governmental body composed of lawyers, officers, and members and others that hears citizen complaints against the police) is empowered to determine whether the subject officer's conduct was a transgression of the code of ethics, as well as to impose penalties on the police officer, such as a warning, reprimand, suspension without salary for period not exceeding 60 days, demotion, or dismissal.[83] Any party to the proceeding may bring an appeal from a final determination of the Ethics Committee before a judge of the Quebec Court.[84] Similarly, in Ontario, a civilian Board of Inquiry conducts hearings on citizen complaints against the police, and if misconduct is proved at the hearing, the chief of police may make submissions as to penalty and the board of inquiry is empowered to impose a penalty for the officer ranging from a reprimand to dismissal for the police force.[85] Parties to a hearing before the Board of Inquiry may appeal to the Divisional Court.[86] The Ontario Police Complaints Commissioner testified about the effect of having the power to impose discipline on monitoring or curbing police misconduct:

> Generally speaking, people aren't out to sacrifice officers. They have tremendous regard for the work they do and the rigors which they face. But I believe our population believes very strongly in the need for accountability. Granting exceptional powers which police have requires a credible and open accounting for the exercise of that power, not that you hang coppers out to dry but that they be required to account. . . . the types of complaints which the Metropolitan Toronto Police now face are similar in number and similar in breadth from incivility through the most egregious force. But *the nature of the complaints has dropped very much in gravity.* And so we are no longer getting those extreme allegations. I think the legislation has had a deterrent effect and I think that's been very valuable. And the police have benefited from it because they have gained a lot of community support as a result.[87]

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[78] *Civilian Review Survey*, p. 2. Detroit's Board of Police Commissioners has the authority to overrule disciplinary actions imposed by the Chief of Police or trial boards. *See* Detroit, Mich., Code ch. 11, § 7-1103 (4) (1990).

[79] *See* Police Services Act of 1990, Ont. Rev. Stat. ch. 10, § 97, 2nd Sess., 34 Leg., 38 Elizabeth II, 1989.

[80] *See* Bill 86, "An Act respecting police organization and amending the Police Act and various legislation" (Sept. 1, 1990).

[81] U.S. Commission on Civil Rights, *Who is Guarding the Guardians?* (October 1981), p. 125.

[82] Lack of sufficient investigative staff and resources was another factor attributed to the past failure of review boards. Ibid.

[83] An Act Respecting Police Organization, Que. Stat., Ch. 0-8.1, § 94, 129-130., Circular No. 25, September 1990.

[84] *Id.* § 136.

[85] Police Services Act, Ont. Rev. Stat., Ch. 10, § 97 (eff. Dec. 31, 1990).

[86] *Id.* § 98.

[87] Clare Lewis, Police Complaints Commissioner for Ontario, former President of IACOLE, testimony, *Hearing Transcript*, vol. 2, pp. 244-45 (emphasis added).

Chapter 5. Latinos in the District of Columbia Court System

For non-English-speaking Latinos, language barriers often result in a variety of decreased legal opportunities and protections. This result is especially pronounced when they are thrust into the judicial system. Latinos entering the D.C. court system are not likely to know what to expect, and many recent immigrants are unaware of differences between the legal systems in their countries of origin and the legal system here.[1] The availability of language interpreters for such individuals in the criminal justice system is perhaps the single greatest factor that will determine whether constitutional, common law, and statutory rights, as well as procedural protections, are at all meaningful for them.

Witnesses at the Mount Pleasant hearing alleged that Latinos in the District were at a distinct disadvantage throughout every level of the D.C. court system because:

- Basic information and general courtroom orientation and instructions, including signs and literature, were not available in Spanish or any other foreign language, for non-English speakers entering the District of Columbia Courthouse, or at the information desk;[2]

- Interpreters were generally not available for defendants during Saturday arraignments at Superior Court, thus forcing some non-English-speaking Latinos to spend additional time in jail until an interpreter was available;[3]

- Interpreters were not available to assist non-English-speaking victims of intrafamily violence during "papering" of their assailants, the stage at which the U.S. attorney and law enforcement officer determine whether to prosecute the accused, and when seeking court-ordered protection for the victim;[4]

- No Spanish speakers were employed at Victims' Assistance,[5] which counsels and assists victims of domestic violence and other acts of violence; and

- No Spanish-speaking officers were employed at the D.C. probation office's diagnostic branch.[6]

Moreover, the Commission was told that Spanish-speaking persons convicted of an offense had no inpatient drug or alcohol rehabilitation programs in the District to serve them[7] and that it was often difficult for incarcerated Latino defendants to earn good time credits due to limited bilingual staff.[8]

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[1] *See* Pam Weisz, "Lawyers help Hispanics cope with confusing court process," *The Washington Times*, Sept. 24, 1992, p. B-3.

[2] Angela Jordan Davis, Director, District of Columbia Public Defender Service, testimony, *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, 1992 (hereafter *Hearing Transcript*), vol. 2, p. 334.

[3] Davis Testimony, *Hearing Transcript*, vol. 2, p. 336; *see also* Daniel Klaidman, "Courts Stumble in Serving Latinos," *Legal Times*, Aug. 26, 1991, p. 16. (hereafter "Courts Stumble").

[4] Leslye E. Orloff, Director, Clinica Latina, Ayuda, Inc., testimony, *Hearing Transcript*, vol. 2, p. 371.

[5] Ibid.

[6] Davis Testimony, *Hearing Transcript*, vol. 2, p. 339.

[7] Davis Testimony, *Hearing Transcript*, vol. 2, p. 339; *see also* "Courts Stumble," p. 16.

[8] Davis Testimony, *Hearing Transcript*, vol. 2, p. 340. *See also* Carlos Mendoza, Visitors' Services Center, telephone interview, July 10, 1992.

In most instances, language barriers in both the civil and criminal justice systems are similar to those facing Latinos in soliciting other services in the community. However, the serious nature of judicial proceedings, combined with the gravity of potential consequences, magnifies the Latino community's difficulty in dealing with a complex system.

The D.C. Council has already recognized and addressed some of the problems facing non-English-speaking Latinos in the court system through remedial legislation, and the court system has undertaken measures that attempt to remedy many of the problem areas.[9] Some of these measures are recent, however, and have not been fully implemented.

Overview of the District of Columbia Court System

The D.C. court system was established by Congress in 1971 and consists of the D.C. Court of Appeals, the Superior Court of the District of Columbia (trial court), and the Executive Office.[10] This chapter addresses issues related to the treatment of Latinos within this system, and not in Federal courts within the District of Columbia.

Entering the D.C. Courthouse

As described by one witness, "[t]he D.C. Superior Court building is a bewildering maze of crowded hallways, offices and courtrooms."[11] At the time of the Commission hearing, there was no bilingual staff at the court's information desk. Noting that the court system soon planned to remedy this, Angela Jordan Davis, director of the Public Defender Service for the District of Columbia, described it as "one monumental practical obstacle for Latinos in Superior Court," and "an important and powerful symbol of how Latinos are treated at all levels of the criminal justice system in this city."[12] She further stated:

> Persons who work at the information booth tell people what courtroom to go to, where to go for drug testing, where to find the Office of Interpreter [Coordinators], where to find the probation office, and where to find the finance office in order to post bond. On countless occasions, Latinos have arrived late to court or missed appointments or simply turned around and gone home because nobody in the information booth has been able to direct them.[13]

In March 1992, the courts hired a full-time bilingual information receptionist to work at the main public information center, to provide the court system with bilingual capability for both the walk-in public and telephone inquiries during regular working hours.[14]

Another important tool in finding one's way through the court system is through informational brochures. Several informative brochures may be obtained from the information office, including ***Welcome to the District of Columbia Courts*** and ***A Victim's Guide to the D.C. Criminal Justice System,*** which are not available in Spanish, and four that are:

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[9] *See* Resolution 7-39, Council of the District of Columbia, "Designation of the District of Columbia as a Multiracial and Multicultural City Resolution of 1987"; "Interpreters for Hearing-Impaired and Non-English Speaking Persons Act of 1987," D.C. Code Ann. § 31-2702 (1989) (hereafter Interpreters Act). *See also* D.C. Code Ann. § 1-2342 (1989), which reads in part, "The Mayor shall make available to persons whose primary language is Spanish, a Spanish text version of any District of Columbia government published application, informational brochure or pamphlet which is essential to the obtaining of services relating to the health, safety and welfare of Latino residents of the District of Columbia" (hereafter "Non-English Speaking Persons Act of 1987"); Chief Judge Fred B. Ugast, Superior Court of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Mar. 31, 1992 (highlighting measures undertaken to increase Hispanic access to the courts) (hereafter Ugast Letter); Ulysses B. Hammond, Executive Officer, D.C. Courts, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 14, 1992 (discussing developments on court programs designed to assist Latinos) (hereafter Hammond Letter, Oct. 14, 1992), and Ulysses Hammond, Executive Officer, D.C. Courts, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Nov. 6, 1992, p. 2 (verifying personnel data and other Superior Courts policies) (hereafter Hammond Letter, Nov. 6, 1992).

[10] District of Columbia Court Reform and Criminal Procedures Act of 1970, Pub. L. 91-358, title I, § 111, 84 Stat. 475, *codified at* D.C. Code Ann. § 11-101 (1973); *see also* D.C. Code Ann. §§ 11-101(2), 11-901, 11-1101, 16-1001 (5)(a) & (b); *See generally Id.* at §§ 11-921, 11-1101, 11-1201, 11-902, 11-1301 (1989); §§ 11-1322, 11-1722, 24-106, 16-2337 (1988).

[11] Davis Written Testimony, *Hearing Transcript*, p. 6.

[12] Ibid.

[13] Ibid., pp. 6-7.

[14] Ugast Letter, p. 2. *See also* Hammond Letter, Oct. 14, 1992; Hammond Letter, Nov. 6, 1992.

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Tribunal Superior del Distrito de Columbia, Oficina de Interpretes (*Superior Court of the District of Columbia, Office of Interpreters*), *Sus Derechos ante el Tribunal de Trafico* (*Your Rights in Traffic Court*), and *Conozca el Tramite del Tribunal de Reclamaciones Pequeñas del Distrito de Columbia, Recaudar el Dinero* (*Know the Procedures of Small Claims Court of the District of Columbia, Collecting the Money*).[15] There is no Spanish language brochure that provides basic information to either criminal defendants or victims seeking assistance. Maria Holleran-Rivera, representing the D.C. Hispanic Bar Association, told the Commission that since legal documents and forms are often complex and difficult to understand at best, the lack of such informational aids leaves Latinos at a great disadvantage. In written testimony, Ms. Holleran-Rivera advised the Commission:

> [w]hile some of the Court's divisions have made the effort to translate the court's forms and pamphlets into Spanish, few members of the Spanish-speaking public know these materials are available. . . . Similarly, simply translating materials into Spanish is often not effective to reach members of the community whose written knowledge of Spanish or English is inadequate.[16]

In October 1992, the Executive Office of the Courts advised the Commission that it was in the process of contracting for Spanish translation of the 105 forms and public brochures identified by the court system's first bilingual court services specialist.[17] Since the court had not received any funding for this purpose, implementation of the program will require reallocation of funds from other programs.[18] The court was also examining the use of a telephonic interpreter service to provide supplemental interpreter services for telephone inquiries.[19]

Latino Court Personnel

The D.C. court system serves a population of approximately 600,000.[20] The courts are staffed by approximately 1,300 employees, of whom 13 are Latino.[21] There are 9 appellate judges and 59 trial court judges in the D.C. courts. Only 2 of the 59 Superior Court judges are Hispanic, and none on the Court of Appeals.[22]

Nominations for appointments to the appellate and trial courts are submitted to the President of the United States by the D.C. Judicial Nomination Commission.[23] Positions on the seven-member Commission are filled by appointment from the following authorities: the President of the United States (one member); the Board of Governors of the unified District of Columbia Bar (two members); the Mayor (two members); the D.C. Council (one member); and the chief judge of the U.S. District Court for the District of Columbia (one member).[24] The chief judge's appointee must be an active or retired Federal judge serving in the District.[25] The first Hispanic to serve on the Judicial Nominating Commission will begin a term commencing in January 1993, appointed by the Board of Governors of the D.C. Bar.

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[15] Informational Brochures, Mayor's Office on Latino Affairs.

[16] Maria Holleran-Rivera, written testimony, *Hearing Transcript*, p. 4.

[17] Hammond Letter, Oct. 14, 1992, p. 2. In January 1992 the court system hired its first bilingual court services specialist. According to the Executive Office of the Courts, the specialist's responsibilities also include reviewing all signs in the court complex, all forms and brochures, providing a comprehensive and ongoing review of court information services, and providing recommendations for enhancing court services to the Latino community.

[18] Ibid.

[19] Ibid.

[20] Bureau of Census data, 1990.

[21] Ugast Letter; *see also* Final Report of the Task Force on Racial and Ethnic Bias in the Courts, District of Columbia Courts, May 1992, p. 15 (containing figures as of June, 1990) (hereafter Racial and Ethnic Bias Task Force Report).

[22] Samuel Delgado, Attorney, testimony, *Hearing Transcript*, vol. 2, p. 350 (hereafter cited as Delgado Testimony); Holleran-Rivera Testimony, *Hearing Transcript*, vol. 2, p. 373. *See also* D.C. Code Ann. § 11-903 (Supp. 1991).

[23] Title 11, D.C. Code Ann. app. District of Columbia Self-Government and Governmental Reorganization Act, The District Charter, §§ 4-433, 4-434 (1989).

[24] *Id.* at § 4-434.

[25] *Id.*

In an effort to increase Hispanic representation on the Courts, Maria Holleran-Rivera testified:

> The Hispanic Bar Association is actively involved in identifying and encouraging the application of minority candidates to fill judicial vacancies. We are not alone. The District of Columbia Bar (a mandatory bar) and other voluntary bars have also made the appointment of minorities to the bench a priority. While the Judicial Nomination Commission did forward the names of Latino women attorneys on two separate occasions, they were rejected by the White House. We will continue to recommend to the Judicial Nomination Commission and to the President qualified minority applicants for bench vacancies. . . .[26]

In 1990 the Joint Committee on Judicial Administration of the District of Columbia Courts established the Task Force on Racial and Ethnic Bias in the Courts, to determine the extent to which racial or ethnic biases were perceived or found, and to make recommendations to reduce or eliminate those biases.[27] Specifically, the task force was charged with i) "examining the District of Columbia court system for the purpose of identifying any gender, racial, and ethnic bias and proposing methods for reducing and ultimately eliminating such bias from the court; ii) assessing the public perceptions of bias and recommending methods of addressing such perceptions; and iii) identifying any existing areas of disparate treatment and recommending methods to eliminate such treatment to assure a court system free from gender and racial and ethnic bias."[28]

A workshop of the task force included testimony that qualified members of the Hispanic community have applied for various positions at the courts, but have not been hired.[29] According to one witness at the workshop, the courts' need for bilingual staff is increasing at a faster rate than the rate at which employees with such qualifications are being hired.[30] "As an example, another witness who works with the Courts testified that caseload requests for interpreters have increased from 20 per month 5 years ago to 300-350 requests per month, and while her office is able to provide services during court proceedings, it cannot at the same time meet the need for bilingual information and other services for non-English-speaking users of the Courts."[31] Witnesses further testified that employees who are bilingual are asked to act as interpreters, with no additional compensation or grade increase commensurate with their skills. Thus one of the consequences of not having staff sufficient to meet the needs of court users has been to increase the responsibilities of current staff.[32]

As a result of the extensive testimony gathered, the task force concluded that the Hispanic composition of the work force of the Superior Court and court system is disproportionately low, compared to the general population in the District.[33] Moreover, the task force found that the failure to hire bilingual staff denies non-English-speaking defendants access to a number of programs for which they would qualify if there were bilingual staff available for such programs, including alternatives to incarceration such as the High Intensity Treatment Supervision Program, Intensive Probation Program, electronic monitoring and Project Safety Net, as well as the Probation and Parole Resources.[34]

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[26] Holleran-Rivera Written Testimony, *Hearing Transcript*, p. 3.

[27] About the District of Columbia Courts, 1990-1991, Executive Office, District of Columbia Courts, p. 9 (hereafter "About the D.C. Courts, 1990-91").

[28] Ibid.

[29] Racial and Ethnic Bias Task Force Report, p. 18.

[30] Ibid.

[31] Ibid.

[32] Ibid.

[33] A Report of Proceedings has been prepared by Judge Ricardo M. Urbina, Chair of the Personnel Subcommittee of the Task Force, and is contained in the records of the task force, maintained at the Executive Office of the D.C. Courts. ***Racial and Ethnic Bias Task Force Report***, p. 18.

[34] Ibid, p. 19.

Information provided by the Executive Office of the Courts indicates that as of November 1992, there were a total of 29 bilingual Spanish-English employees working in various departments of the court system and 2 additional employees with a working knowledge of Spanish.[35] Twenty-seven of these employees were in positions involving direct public contact, broken down as follows: 12 in the Social Services Division, 5 in the Criminal Division, 1 each in the Family Division and Civil Division, and various other specialized areas.[36] Ulysses Hammond, the court's chief executive officer, further stated that four additional bilingual probation officers will be hired in the near future.[37]

Interpretation Services

An accused has no constitutional right to interpretive services.[38] In certain circumstances, however, the failure of a trial court to appoint an interpreter for an accused who could not understand or be understood in the criminal proceedings against him has been held to constitute a denial of a fair and impartial trial, or due process of law.[39] Historically, as well as under Superior Court rules, the availability and appointment of interpreters to translate in court proceedings, both criminal and civil, rests within the discretion of the court.[40] Thus, if the court determined that the defendant understood English well enough, it could decide not to appoint an interpreter in a criminal prosecution.

The D.C. Council has attempted to ensure the availability of interpreters in court proceedings for non-English-speaking persons with the enactment of the Interpreters for Hearing-Impaired and Non-English Speaking Persons Act of 1987,[41] which requires the presence and usage of an interpreter upon the request of a communication-impaired person[42] when that person is a party or witness in court proceedings.[43] Specifically, this section provides:

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[35] Hammond Letter, Nov. 6, 1992.

[36] Ibid. The remaining bilingual employees are employed throughout the courts as follows: one on judicial staff (judicial secretary); one in special operations (coordinator of interpreters); one in the Executive Office (court services specialist); one in administration (information specialist); financial operations (finance clerk); and probate (lead file clerk).

[37] Ibid.

[38] The U.S. Supreme Court has never clearly defined the constitutional basis for a right to an interpreter in either criminal or civil proceedings. However, other courts have recognized that in circumstances where the accused is so unfamiliar with the English language that he cannot communicate his statements or testimony or statements of others involved in the proceedings, he is entitled to be furnished the assistance of an interpreter. U.S. CONST. AMENDMENT VI. The concept of due process involves the notion that an accused has a fundamental right which guarantees a fair and impartial trial. *See* In re Muraviov, 13 Cal. Rptr. 466, 192 Cal. App.2d 604 (1961).

[39] *See* Parr v. Page, 430 P.2d 834 (Okla. Crim. 1967) (holding that the accused was denied due process of law and a fair and impartial trial, noting that he was a 23-year-old, uneducated, Mexican American migrant worker who could neither read, write, nor speak the English language, his native language being Spanish, and that the minutes of the court did not reflect that he was advised of his constitutional rights or that an interpreter was present).

[40] *See* Rule 28(b) of the Superior Court Rules on Juvenile Proceedings, *Expert witnesses and interpreters* ([t]he Division may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter) (juvenile proceedings); Rule 43(f) of the Superior Court Rules on Domestic Relations Proceedings, *Evidence* ([t]he Division may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter) (domestic relations proceedings).

[41] Interpreters Act, D.C. Code Ann. § 31-2702 (1989). This service is provided to persons requiring interpreter services at the expense of the court, as stated in section 13, which provides:

> (a) An appointed interpreter shall receive a reasonable fee for the interpreter's services.
> (b) The salaries, fees, expenses, and costs incident to providing the services of interpreters under this act shall be paid for by the Office [Office of Interpreter Services].

Id.

[42] *Id.* Subsection 2 (2) of the act defines a "communication-impaired person" as one whose hearing is impaired or who does not speak English. *Id.* at § 31-2702, subsec. 2(2).

[43] *Id.*

> Whenever a communication-impaired person is a party or witness, or whenever a juvenile whose parent or parents are communication-impaired is brought before a court at any stage of a judicial or quasi-judicial proceeding before a division or office of a court of the District of Columbia, including but not limited to civil and criminal court proceedings, proceedings before a commissioner, juvenile proceedings, child support and paternity proceedings, and mental health commitment proceedings, the appointing authority may appoint a qualified interpreter to interpret the proceeding to the communication-impaired person's testimony. The appointing authority shall appoint a qualified interpreter upon the request of the communication-impaired person.[44]

In any criminal, delinquency, or child neglect proceeding in which counsel has been appointed to represent an indigent defendant who is communication impaired, the interpreter's role is to assist the defendant in communication with counsel *in all phases* of the preparation and presentation of the case.[45] First, an interpreter is required when a communication-impaired person is arrested and taken into custody for an alleged violation of a criminal law. A qualified interpreter is required to be present for any custodial interrogation, warning, notification of rights, or taking of a statement from a defendant. A person who has been arrested, but is otherwise eligible for release, may not be held in custody pending the arrival of an interpreter.[46]

Moreover, answers, statements, or admissions, written or oral, made by communication-impaired persons in response to questions from law enforcement officers in criminal or delinquency proceedings may not be used against the communication-impaired person, *unless* either the answer, statement, or admission was made or elicited through a qualified interpreter and was made knowingly, voluntarily and intelligently. For a waiver to occur, the court must make a special finding upon proof by a preponderance of the evidence that the answer, statement, or admission made by the communication-impaired person was made knowingly, voluntarily, and intelligently. Interpreters are also required in any criminal, delinquency, or child neglect proceeding in which counsel has been appointed to represent an indigent defendant who is communication impaired.[47]

Since the passage of the Interpreters Act in 1987, confusion as to funding, implementation, and enforcement has prevented the act from achieving its maximum effect. The D.C. court system has taken the position that the Office of Interpreter Services (OIS) is an executive branch agency under the jurisdiction of the Mayor's Office, and, "[al]though required by statute to provide the services mentioned in the [statute], [has] never provided any court services, primarily because it has never been adequately funded."[48] In fact, there is a question of OIS' existence, on the part of the courts.[49] The court system states that its own Office of Interpreter Coordinators (OIC) was created pursuant to its authority under various Superior Court rules,[50] a full year before the Interpreters Act was signed into law.[51]

The court system's reliance on Superior Court rules, however, drastically alters the rights and safeguards guaranteed to Latinos under the code. Rule 28(b) provides that in juvenile proceedings, "[t]he Division **may** appoint an interpreter of its own selection. . . ."[52] Similar language is found in Superior Court rules regarding domestic relations, criminal proceedings, and civil practice.[53] In other words, under Superior Court rules, appointment of an interpreter by the court is optional, and a judge may elect not to appoint an interpreter at his or her own discretion. Under the Interpreters Act, however, the appointment of an interpreter was taken out of the discretion of the courts and is no longer optional—appointment of an interpreter is now mandatory, upon the request of a party.

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[44] *Id.* at § 31-2702 (a).

[45] *Id.* at § 31-2702 (b).

[46] *Id.*

[47] *Id.*

[48] Hammond Letter, p. 3.

[49] Ibid.

[50] Ibid. *See e.g.* SCR Crim. Rule 28, SCR Juv. Rule 28(b), SCR Civ. Rule 43 and SCR Rule 43(f) (1988).

[51] Hammond Letter, p. 4.

[52] SCR Juv Rule 28(b) (emphasis added).

[53] SCR Crim. Rule 28, SCR Juv. Rule 28(b), SCR Civ. Rule 43 and SCR Rule 43(f) (1988).

The apparent confusion as to which law applies may be part of the reason the court has suffered severe budget shortfalls with respect to the provision of interpreter services to Latinos and other persons falling under the Interpreters Act. The Executive Office of the Courts advised the Commission that:

> [u]p until 1989, the Court received only $8,000 in appropriations for all interpreter services annually. From 1989 through 1992 the annual appropriation was still only $44,000 for the provision of interpreters for *all* the various language needs, including sign language for hearing impaired persons. As in past years, it quickly became evident that this level of funding would not be adequate to cover the services that needed to be provided. However, the court, again as in past years, made a commitment to provide the services in spite of the costs. Money was reallocated from other programs to insure proper services were provided. For example, in 1989 the Court spent $144,301, or better than $100,000 more than the appropriation for interpreters. In 1992, the Court's commitment has burgeoned to almost $230,000 or about $190,000 greater than our appropriation.[54]

Superior Court rules do not provide for alternative means of funding interpreter services for non-English-speaking persons, whereas the Interpreters Act contains creative provisions for handling interpreter's expenses, discussed below.

The court system clearly falls under the mandate of the Interpreters Act. Section 445 of the District's Home Rule Act grants the courts budget autonomy from the Mayor and the Council.[55] As a result, according to the OCC, there are two separate systems for paying for interpreters in the District government.[56] The Office of the Corporation Counsel (OCC) for the District of Columbia informed the Commission that the Mayor's Office of Constituent Services discharges the duties of the Office of Interpreter Services for Executive agencies. This office pays for interpreters for such agencies and covers payments by intra-District transfers from the affected agencies.[57]

Moreover, OCC told the Commission that the court system's Office of Interpreter Coordinators (OIC) discharges the duties of the Office of Interpreter Services for the courts and directly pays for the court's interpreters.[58] For 1993 the Congress has noted the court system's needs and has dramatically increased interpreter services funding to $250,000.[59] It remains unclear, however, who bears ultimate responsibility for obtaining increased funding under the act to ensure adequate interpreter services to communication-impaired persons. As a result, greater coordination is needed between the Mayor's Office, which is required to fund the act, the Chief Judge of the courts, and the court's Executive Office to achieve funding and give the Interpreters Act its maximum impact.

Court-imposed limitations on Interpreter Services. The act requires the Office of Interpreter Services (OIS) to pay for the salaries, fees, expenses, and costs incident to providing interpreter services,[60] but allows OIS to issue rules prescribing a schedule of reasonable fees for services rendered by interpreters, as well as to establish rules governing the method of payment for such services.[61] The act further provides that the presiding judge may direct that all or part of the salaries, fees, expenses, and costs incurred for interpreter services may be apportioned among parties or taxed as court costs in civil actions.[62]

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[54] Hammond Letter, Oct. 15, 1992, p. 4.

[55] Title 11, D.C. Code Ann., app. District of Columbia Self-Governmental Reorganization Act, The District Charter, § 445 (1989). Section 445 requires the District of Columbia courts to prepare and annually submit to the Mayor annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the D.C. court system, for inclusion in the annual budget. Moreover, the Council may comment or make recommendations concerning such annual estimates involving the expenditures and appropriations necessary for the maintenance and operation of the D.C. court system submitted by the courts, but shall have no authority under the act to revise such estimates. *Id.*

[56] Vanessa Ruiz, Deputy Corporation Counsel, Office of the Corporation Counsel, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Nov. 9, 1992 (regarding interpreter services).

[57] Ibid.

[58] Ibid.

[59] Hammond Letter, Oct. 15, 1992, p. 4; *see also* Ruiz Letter, Nov. 9, 1992.

[60] D.C. Code Ann. § 31-2711, sec. 13(a) (1988 Supp.).

Despite the District's statutory requirement to provide interpreters, and statutory guidelines delineating options available to the courts for payment of these services, professionals who have dealt with the courts and witnesses at the Commission hearing have alleged that the court system fails to meet this requirement, resulting in possible ongoing violations of the Interpreters Act.[63]

Spanish speakers and other non-English speakers are now routinely denied interpretation services in all civil matters unless they are able to establish *in forma pauperis* status (indigency), except for those involving civil protection orders.[64] The effect of the court's policy thus shifts the burden to indigent non-English speakers to establish their *in forma pauperis* status without the aid of an interpreter.[65] More importantly, this policy may serve to deny access to the court entirely to those unable to pay a qualified interpreter, although the law provides that other means of payment of interpreter services are available, such as taxing the fees as court costs. Thus, if the fees are taxed as court costs, a non-English-speaking plaintiff with a viable claim against a defendant could utilize the court's interpreter services without first having to prove indigency. Following the conclusion of the matter, the court could then order the losing party to pay the costs associated with providing interpreter services.

The additional confusion this policy creates is best illustrated by the example given by an attorney who represented a defendant in a landlord-tenant dispute in Superior Court.[66] On July 23, 1992, the attorney telephoned OIC to request an interpreter for a hearing before the Landlord-Tenant Branch of the Superior Court on July 27, 1992. OIC told the attorney that no interpreter would be provided until the client had been approved by the court as being indigent. At the scheduled hearing, however, the attorney was seeking to establish that her client was indigent, because she could not afford to pay the $75 fee for a jury trial, but since her client could not afford interpreter services at the hearing to establish indigency, no interpreter was provided. Ultimately, the attorney interpreted for her client at the proceeding.[67]

Ironically, at a time when D.C. government is being urged to improve the quality of services to Latino residents, the court has cut back on this basic, mandatory service.[68] During the week of April 13, 1992, the Superior Court discharged approximately 15 freelance interpreters who were told their work was being curtailed because the court could no longer afford to pay them.[69] Defense attorneys and community activists acknowledge that the court system faces a severe economic crunch; however, some have alleged that officials are trying to balance the budget at the expense of the city's most vulnerable and least represented citizens—the Latino community.[70] Court officials specifically denied this allegation and were quoted as stating that the cuts were required by budgetary concerns, but maintained that non-English-speaking defendants will continue to have full access to interpreters.[71] In further response to this allegation, the court system advised the Commission that the responsibilities of the OIC's full-time Spanish-speaking coordinator were reallocated to include courtroom interpretation, and the hearing-impaired persons interpreter would be assigned coordination and scheduling of contract interpreters. According to Executive Officer Hammond, this reallocation of staff resources reduced the need for more expensive contract interpreters and did not reduce the level of services provided to court participants.[72]

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[61] D.C. Code Ann. §§ 31-2711, sec. 12(b)(5) & (6) (1988 Supp.).

[62] *Id.*, sec. 13(c).

[63] *See* Affidavit of Charles J. Becker, Professional Interpreter, Aug. 28, 1992.

[64] Affidavit of Leslye E. Orloff, Director, Clinica Latina, Ayuda, Aug. 28, 1992, p. 2 (hereafter Orloff Affidavit); Affidavit of Stacy L. Brustin, Supervising Attorney, Columbus Community Legal Services, Catholic University and Director, Hermanas Unidas, Ayuda, Aug. 28, 1992, p. 2 (hereafter Brustin Affidavit).

[65] Orloff Affidavit, p. 2.

[66] Affidavit of Kathryn M. Doan, Staff Attorney, The Legal Aid Society of the District of Columbia, pp. 1-2.

[67] Ibid.

[68] Klaidman, "'A Step Backwards'; Court Cuts Back Spanish Translating Services," *Legal Times*, Apr. 20, 1992, p. 1 (hereafter "Court Cuts Back Translating").

[69] Ibid.

[70] Ibid. The article quoted D.C. attorney Heather Shanner as stating, "The tragedy is that those who are in most need of services because of their poverty, their inability to speak English, and their lack of representation in the community are powerless to remedy this." Ibid.

Among the most vulnerable members of the Latino community affected by a lack of interpreters are children. One witness at the Commission hearing testified that she is aware of several instances in which Latino children have been used as interpreters in neglect, delinquency, and "children in need of supervision" proceedings.[73] Carla Branch, director of Social Services for the Latin American Youth Center, told the Commission:

> Children have frequently been used as interpreters, although we have asked time and time again that does not occur. They have been used as interpreters for attorneys [and] for social workers.[74]

Ms. Branch stated that she is aware of one case in which a Latino mother was reported for physical abuse of her 13-year-old child, and the child was used as an interpreter during the investigation phase of the neglect proceeding.[75] The child-victim in a neglect proceeding is already in the difficult position of opposing his parent in order to obtain protection from that parent's abuses. However, when that child is placed in the position of having to interpret that parent's testimony, he is forced to choose whether to be loyal to his parents or to trust in an unfamiliar system. The result is that the pressure the child is placed under is intensified by the very system that was put in place to protect the child.

This situation may similarly lead to a miscarriage of justice for non-English-speaking Latino parents, where the parent has petitioned the court for court-ordered assistance in supervising a rebellious child.[76] In these types of proceedings, the parent and the child are adversaries, since the child is entitled to have assistance of counsel at all critical stages of the case and may oppose such a petition filed by parents.[77] Ms. Branch advised the Commission that she is aware of several instances where children have been asked to interpret their parents' testimony in court in these types of cases.[78] By allowing children to interpret their parents' testimony, the courts are, in effect, allowing one party to present both sides of the case to the court and prohibiting the non-English-speaking Latino parents from presenting their case.

The Commission received sworn testimony that proceedings have had to be postponed due to the lack of a qualified interpreter, resulting in delays for Latinos and resulting in unnecessary incarceration for Latino defendants, discussed below. In a sworn statement, one attorney advised the Commission that the shortage of interpreters causes lengthy delays for cases involving Spanish-speaking clients, thus placing an unfair burden on Latinos. She stated:

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[71] Ibid.

[72] Hammond Letter, Oct. 15, 1992, p. 4.

[73] Carla Branch, Director of Social Services, Latin American Youth Center, telephone interview in Washington, D.C., Oct. 6, 1992 (hereafter Branch Telephone Interview, Oct. 6, 1992).

[74] Carla Branch, testimony, Director of Social Services, Latin American Youth Center, *Hearing Transcript*, vol. 1, p. 250 (hereafter Branch Testimony).

[75] Carla Branch, Director of Social Services, interview in Washington, D.C., October 4, 1991 (hereafter Branch Interview, Oct. 4, 1991). *See* D.C. Code Ann. § 16-2301 *et seq.* (1989) (proceedings regarding delinquency, neglect, or need of supervision).

[76] *See* D.C. Code Ann. § 16-2301 *et seq.* (1989).

[77] D.C. Code Ann. § 16-2304 (a) (1989).

[78] Branch Telephone Interview, Oct. 6, 1992.

> Generally, the Court handles shorter, preliminary matters before taking longer matters such as trials and hearings, which are heard later in the day. Since the new policy has gone into effect, cases with Spanish-speaking clients are almost always called at the end of the calendar because an interpreter is not available earlier. As a result, Spanish-speaking people have to wait in court all morning, and sometimes all day, even on routine matters which could be disposed of quickly, and which, if the client spoke English, would be handled early in the morning. This delay causes a hardship for clients who have children and cannot afford day-care, as well as clients who miss work while at court.[79]

Latino arrestees sometimes find that there are no Spanish-speaking employees at "lockup"[80] and presentment, particularly on Saturdays.[81] It is at this critical juncture that the deficiencies of the system truly affect the lives of the Latino criminal defendants. Charles J. Becker, a professional interpreter in English and Spanish, told the Commission that based on his own experiences in interpreting judicial proceedings at the D.C. Superior Court, the decision of the court to cut the availability and quality of interpreting services has "grievously debased the general quality of justice that Spanish speakers would otherwise have received in the District of Columbia."[82] Moreover, Mr. Becker stated, the lack of qualified interpreters has sometimes resulted in unnecessary incarceration for non-English-speaking Latinos.

In one such instance that occurred as recently as August 17, 1992, Mr. Becker told the Commission:

> [A]t about 4 o'clock on the afternoon of Monday, August 17, I interpreted in a case in the Arraignment Court in which an individual had remained incarcerated since the previous Saturday due to the fact that no interpreter was available for his arraignment that day. This individual was unnecessarily and unlawfully held this extra time, prior to release on his own recognizance, simply for being a Spanish-speaker.[83]

In response to these allegations, the court system stated that it is court policy "to conduct arraignments for every individual, English speaking or non-English-speaking, who arrives at the courthouse prior to the daily cut-off," discussed more fully below.[84]

Mr. Becker also told the Commission that criminal proceedings have gone ahead notwithstanding the absence of a qualified interpreter, and "on numerous occasions, [Mr. Becker went] to a courtroom only to learn that the proceeding was held *in [Mr. Becker's] absence*" while he had been interpreting in a separate courtroom.[85] This took place despite the fact that the arrestee had not waived his right to an interpreter in the proceeding:

> Although the Interpreters Act has provisions for individuals to waive in writing their rights to a qualified interpreter, I know of no instance in which such a waiver has been obtained, nor can I conceive of how one could be knowingly obtained when the individuals in question do not speak English.[86]

Latinos in the Criminal Justice System

Allegations regarding difficulties confronted by Latino defendants in the D.C. court system range from the lack of interpreters in Saturday arraignment court[87] (the proceeding in which judges and hearing commissioners set bond) to obtaining early release from the correctional system. In addition, witnesses at the Commission hearing alleged that there are insufficient numbers of Latinos on court staff who are capable of communicating with and assisting Latino defendants.

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[79] Brustin Affidavit, p. 3.

[80] Hogan & Hartson Report, *citing* Tape of Conference by Task Force on Racial and Ethnic Bias, Session 3, in Washington D.C. (June 15, 1991). *See also* Holleran-Rivera Written Testimony, *Hearing Transcript* at p. 4 ("There are frequently no bilingual attorneys in the lock-up or at presentment").

[81] *See generally* Affidavit of Charles J. Becker, professional interpreter, Aug. 28, 1992, p.1; Davis Testimony, *Hearing Transcript*, vol. 2, pp. 337-38.

[82] Becker Affidavit, p. 1.

[83] Ibid., pp. 2-3.

[84] Ugast Letter, Oct. 15, 1992, p. 5.

[85] Becker Affidavit, p. 3 (emphasis added).

[86] Ibid.

[87] Daniel Klaidman, "Hispanic Groups Press D.C. Courts to Address Treatment of Latinos," *Legal Times*, week of Oct. 7, 1991, p. 10

Demographics of Latino Defendants

The full effect of the criminal justice system on non-English-speaking populations, particularly Latinos, has been difficult to study due to a lack of data.[88] The D.C. Public Defender Service (PDS) estimates that 866 Latinos had formal charges brought against them in the District in 1991.[89] PDS gathered these statistics by obtaining from the Pretrial Services Agency the names of all adults charged with criminal offenses in the last 5 years and cross-referencing that list with a list of 1,200 official Spanish surnames published by the U.S. Census Bureau. This list has been used by the Bureau in the past to identify persons of Latino ancestry when people had not been asked directly if they were of Latino origin.[90]

Based on this figure, PDS estimates that 3.8 percent of all persons charged in the District in 1991 were Latino.[91] This does not include all Latinos who enter the system through arrest, since some are never charged with a crime. PDS further estimates that the 866 Latinos charged in 1991 represent a 52.3 percent increase in the number of Latinos in the system over the last 5 years.[92]

These numbers increase significantly when the total number of Latinos in the system is estimated on the basis of requests for interpreter services. According to the Office of Interpreter Coordinators, there are more than 200 requests per month for Spanish-speaking court interpreters in Superior Court,[93] or over 2,400 requests per year. Recent figures provided to the Commission by Pretrial Services Agency indicate that from March 15, 1992, through July 17, 1992, approximately 1,100 arrestees in the District identified themselves as being Hispanic and were in need of interpreter services.[94] This critical stage of a defendant's trek through the criminal justice system, when the need for an interpreter first arises, best illustrates the language barrier difficulties experienced by non-English-speaking Latinos.

Entering the Criminal Justice System

A defendant's entry into the system begins with an arrest, at which time he is booked by the police and placed in "lockup" until the individual can appear at a hearing before a judge.[95] Employees of the Criminal Justice Act Office (CJA) first conduct an interview with each arrestee to determine eligibility for a court-appointed or Public Defender Service attorney if the arrestee is unable to afford one.[96]

The arrestee is then interviewed[97] by an employee of the Pretrial Services Agency (PSA)[98] for background information, which is then used to make recommendations to the courts concerning appropriate

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(hereafter Klaidman, "Hispanic Groups Press D.C. Courts").

[88] Davis Testimony, *Hearing Transcript*, vol. 2, p. 331.

[89] Ibid.

[90] Ibid. PDS acknowledged that this was an imperfect method to determine the exact number of Latinos in the system; however, witnesses for PDS stated that they believe this to be the most reliable method available, given the absence of any ethnic identifiers on court forms. Ibid.

[91] Ibid.

[92] Ibid.

[93] D.C. Public Defender Service Interview of Connie Landro-Tatum, Director of the Office of Interpreter Coordinators, District of Columbia Superior Court, Nov. 22, 1991. *See also* Angela Jordan Davis, Director, District of Columbia Public Defender Service, Statement and Preliminary Report of the District of Columbia Public Defender Service, D.C. Public Defender Service, *Hearing Transcript*, p. 5 (hereafter cited as PDS Report). This figure includes requests for interpreter services in both civil and criminal proceedings, which are also handled by the OIC. Ibid.

[94] Kathy Boyer, Administrative Director, D.C. Pretrial Services Agency, telephone interview, July 17, 1992 (hereafter cited as Boyer Telephone Interview, July 17, 1992).

[95] *See* Hogan & Hartson & The American Civil Liberties Union, "Language Barrier Problems in the Hispanic Community's Contacts with the Metropolitan Police Department and the District of Colombia's Court System," A Report Prepared for the Latino Civil Rights Task Force, p. 29 (hereafter cited as Hogan & Hartson Report).

conditions of pretrial release, if any.[99] PSA also monitors persons released by the courts to ensure compliance with court-ordered conditions of pretrial release and reports violations to the courts.[100]

At arraignment (misdemeanors) or presentment (felonies), the charge is read to the defendant, he enters a plea, and the judge determines bail conditions.[101] Although the courts conduct arraignment/presentment hearings Monday through Saturday[102] and are required to do so within 24 hours of a defendant's arrest,[103] witnesses at the Commission hearing alleged that for Latino defendants Saturday arraignments are often postponed because of the absence of interpreters, thus forcing them to remain in jail until the following Monday.[104]

Lockup; Arraignment. While CJA has several staff members to conduct these interviews throughout the week, only one staff member speaks Spanish and is often unavailable on weekends and holidays. Without a Spanish speaker, the CJA office cannot establish the eligibility of the arrested person, thus forcing the court to assume that a Latino defendant is indigent and assign a court-appointed attorney in cases where no interview has taken place.[105]

The Public Defender Service (PDS) employs a staff of 78 attorneys and is the largest legal office in the District that provides representation to people charged with criminal and juvenile offenses. PDS represents 10-15 percent of persons who are charged with criminal offenses, and the remainder are represented by members of the private bar.[106] PDS employs only three attorneys who are fluent in Spanish and a few more who are not bilingual but possess a working knowledge of Spanish.[107] Of the court-appointed attorneys in the private bar who represent the remaining 85-90 percent of indigent defendants, Angela Jordan Davis testified that only eight of them are fluent in Spanish.[108] Samuel Delgado, formerly with PDS testified:

> The Offender Rehabilitation Division [of PDS], which serves to rehabilitate individuals, has not a single Spanish-speaking individual, not a single Latino. The Prisoner's

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[96] Davis Testimony, *Hearing Transcript*, vol. 2, p. 334.

[97] D.C. Code Ann. § 23-1303 (1989).

[98] If the arrestee is brought in on a misdemeanor, the police may release the individual; however, to do so, the detainee must first be interviewed by an employee of the Pretrial Services Agency for background information, i.e., residence, family ties, employment and criminal history. Trudy Van Voorhis, Pre-Release Supervisor, Pretrial Services Agency, telephone interview, July 10, 1992 (hereafter Van Voorhis Telephone Interview).

[99] Van Voorhis Telephone Interview. Since 1984, the agency has operated an onsite drug-testing facility, and interviews and tests all arrestees for drugs. D.C. Code Ann. § 23-1301 (1989). PSA then incorporates the drug test information into the background report provided to the court on each arrestee. *Id. See also* D.C. Code Ann. § 23-1321 (1989).

[100] Van Voorhis Telephone Interview. *See also* Indices: A Statistical Index to District of Columbia Services, District of Columbia Government, Office of Policy and Program Evaluation, vol. 8, p. 346 (July 1991) (hereafter cited as 1991 Indices).

[101] I.e., the court determines whether the defendant should be released on his or her own recognizance, released on bond, released with bond on special conditions, or detained. PDS Report, p. 9.

[102] *See* Hogan & Hartson Report at n. 98, *citing* Tape of Conference by Task Force on Racial and Ethnic Bias, Session 3, in Washington, D.C. (June 15, 1991).

[103] In County of Riverside v. McLaughlin, 111 S.Ct. 1661, 1670 (1991), the U.S. Supreme Court held that jurisdictions choosing to combine probable cause determinations with other pretrial proceedings must do so as soon as is reasonably feasible, *but in no event later than 48 hours after arrest* (emphasis added). *See also* Rule 5(a), D.C. Sup. Ct. R. Crim. P. (1987) (requiring that a person who is arrested without a warrant be taken before a judge "without delay").

[104] *See* Hogan & Hartson Report at n. 98, *citing* Tape of Conference by Task Force on Racial and Ethnic Bias, Session 3, in Washington, D.C. (June 15, 1991).

[105] Ibid.; Angela Jordan Davis, Director, D.C. Public Defender Service, telephone interview, Aug. 5, 1992.

[106] Davis Testimony, *Hearing Transcript*, vol. 2, p. 334.

[107] Ibid., pp. 335, 381.

[108] Ibid.

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Rights Project [of PDS] stationed out of Lorton/Occoquan (the District's correctional facility), has not a single Spanish-speaking attorney.[109]

Ms. Davis advised the Commission, however, that although both of these divisions are very small (only 4 attorneys in the Prisoner's Rights Project and only 10 social workers in the Offender Rehabilitation Division), PDS staff members are available to assist each of these divisions when needed.[110]

The Latino Civil Rights Task Force has reported numerous problems associated with the lack of Spanish-speaking persons at presentment hearings.[111] A narrative related by Samuel Delgado of the Public Defender Service at the Conference on Racial and Ethnic Bias and reprinted in *Legal Times* illustrates this problem. A defendant was arrested upon an accusation of assaulting a police officer when she became distraught at the arrest of her brother.[112] Her court-appointed attorney did not speak Spanish.

In response to the *Legal Times* article, the attorney who was appointed to represent the defendant stated that she was not given an opportunity by the court to interview her client.[113] Instead, she was provided with a PSA report indicating that the defendant was employed, a resident of the District, and had no prior or pending criminal involvement. The attorney argued these facts to the court, as well as the fact that the defendant's immigration status was not relevant to the issue of her likelihood of returning to court, but to no avail.[114]

The prosecutor argued that the defendant had weak ties to the community and was in the country illegally. The defendant was unable to communicate to her attorney all of the factors that would have permitted her to be released without a financial bond and was ordered to pay a $1,500 bond, which she was unable to obtain. She remained in jail for 13 days, during which time she lost her job. The prosecutor ultimately dropped all charges against her,[115] but not until the defendant had borne a great personal cost.

In a letter to the Honorable Frederick Weisberg, Presiding Judge of the Criminal Division of the Superior Court, the former director of the D.C. Public Defender Service detailed two instances in which a PDS attorney observed that Latino defendants were ill-served by the criminal justice system due to the lack of interpreters on Saturdays and holidays.[116]

The first instance involved a man who came before a Superior Court judge early one Saturday afternoon and appeared to have been assaulted, based on the presence of blood on his shirt and a large gash in his forehead. He was led before the judge, informed in English only that his case had been "no papered" (the government was not going to press charges), and that he was free to go. When the marshall released the man's arm, the man began walking back to lockup, so the marshall spun the man around, as the spectators in the courtroom burst into laughter. The man was not accompanied by a lawyer, and as he walked out of the courtroom, appeared to be humiliated and afraid.[117] The PDS attorney caught up with the man in the hallway and in broken Spanish learned that the man had no idea what had just happened in the courtroom.[118]

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[109] Delgado Testimony, *Hearing Transcript*, vol. 2, p. 352.

[110] Angela Jordan Davis, Director, Public Defender Service for the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 15, 1992.

[111] Hogan & Hartson Report, p. 30.

[112] Ibid.

[113] Letter to the Editor, "Lawyer Never Left Latino Defendant to 'Languish' in Jail," *Legal Times*, Sept. 9, 1991.

[114] Ibid.

[115] Ibid.

[116] Kim A. Taylor, former Director of the D.C. Public Defender Service, letter to Hon. Frederick Weisberg, Presiding Judge, Criminal Division of the D.C. Superior Court, Apr. 4, 1991.

[117] Ibid.

[118] Ibid. *See also* Davis Testimony *Hearing Transcript*, vol. 2, pp. 337-38.

Later that afternoon, the same PDS attorney observed that as another individual was presented to the court, he stood by as his lawyer explained in English that he was unable to communicate with his client. The judge then asked the audience if anyone spoke Spanish. No one in the audience responded affirmatively, so one of the court clerks left to search for someone who was bilingual. After several minutes, another lawyer volunteered to assist the court, and he and the defendant's attorney tried to speak to the defendant. As they did, the court clerk returned with a man from the maintenance staff who appeared to be Hispanic. His services were not used, so he left.

Shortly thereafter, the attorneys returned with the defendant and informed the court that they had been able to ask him some questions and *believed* that he was from El Salvador and was homeless.[119] The court then set a $5,000 surety bond, and the defendant was held with an order to return to court on Monday for the appointment of a Spanish-speaking attorney.[120] These events could easily have been prevented if interpreters had been available for both individuals.

The court system responded to these allegations by stating that court policy is to conduct arraignments for every individual arriving at the courthouse prior to the daily cut-off.[121] Moreover, Ulysses Hammond, Executive Officer of the Courts, advised the Commission in October 1992 that it is not court policy to use anyone other than a qualified court interpreter provided by the Office of Interpreter Coordinators to provide interpreter services. Thus, according to Mr. Hammond, any individual who arrives at the courthouse on Saturday before the cut-off time is arraigned that day and not held over the weekend for arraignment on Monday.[122]

Mr. Hammond acknowledged, however, that there had been some lapses in the execution of this policy:

> As with any large urban court, there have been occasions when some court personnel do not understand appropriate procedures. For example, because of the cost of contract interpreters and their very limited use on the weekends, we keep a qualified interpreter available for the Saturday arraignment court on standby as needed. The arraignment court clerk has the telephone numbers of these standby interpreters that they are to contact in the event their service is needed.
>
> I have received some reports of confusion with this process. However, recent reminders have been issued of the process to be followed to insure every non-English-speaking defendant coming through Saturday arraignment court has timely access to a qualified interpreter.[123]

Pretrial Release

Bail. There is a strong preference for pretrial release over detention, pending trial, under the D.C. Code.[124] However, if the court does not believe the defendant will appear for trial, options are available under the D.C. Code to assist in guaranteeing the defendant's appearance, without detention.[125] For example, if the court believes that the defendant has weak ties to the community—i.e., the defendant has no permanent address, no relatives in the vicinity, and is unemployed—intensive supervision is available.[126] Under intensive supervision, the defendant is released to a location where his movements are restricted and monitored until the defendant's ties to the community are verified.[127] After all appropriate verification is complete, the defendant is released on his own recognizance pursuant to section 23-1321.[128] In addition, other options are available to the courts to prevent detention of nondangerous criminals.[129]

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[119] Ibid. (emphasis in text).

[120] Ibid.

[121] Ugast Letter, Oct. 15, 1992, p. 5.

[122] Ibid.

[123] Hammond Letter, Oct. 15, 1992, p. 5.

[124] Except in instances in which the defendant is charged with a dangerous crime as defined in section 23-1331(3), or if the Government certified by motion that based on such person's pattern of behavior consisting of his past and present conduct, and on the other factors set out in section 23-1321(b), or where there is no condition or combination of conditions which will reasonably assure the safety of the community. *See* D.C. Code Ann. §§ 23-1322, 23-1331 (1989).

[125] Van Voorhis Telephone Interview.

[126] Ibid. For example, through Bonabond, Inc., a pretrial, third-party custodian program. Testimony of Carlos Mendoza, Visitors Services Center (Jan. 30, 1992). The court order showing the conditions of pretrial release is printed only in English. Ibid.

Witnesses at the Commission hearing alleged that, despite statutory guidelines and numerous procedural options available to the courts, Latino defendants are required to post money for bonds far more frequently than other defendants.[130] Figures provided by Pretrial Services Agency dispute this allegation.[131] PSA tracked through the court system, for the period 1989-1991, 314 defendants who identified themselves as Spanish speaking only. Of the Latino defendants tracked, 56 percent were charged with felonies, and 32 percent were charged with misdemeanors.[132] PSA figures suggest that, overall, Latino defendants were just as likely to be released on nonfinancial bonds as other defendants.[133] Moreover, PSA figures suggest that for defendants required to post a financial bond, Latino defendants were likely to pay an average of $1,600 less than other defendants.[134] This comparatively low amount may be due, in part, however, to the fact that more than half of the Latino defendants who were tracked were charged with less serious crimes.

Consistent with the allegations raised at the Commission hearing, however, PSA did find that Latino defendants have greater difficulty in obtaining release once bond has been set.[135] The pervasiveness of the view within the Latino community that Latinos must post higher bonds than other defendants and are required to remain in jail pending trial is fostered by specific instances when the exception proved to be the rule. In an article appearing in the August 26, 1991, issue of *Legal Times*, former D.C. Public Defender Service (PDS) Attorney Samuel Delgado, stated that, "Judges and commissioners are more likely to set a high bond for non-English-speaking people because they assume they are illegal or have poor ties to the community."[136] Delgado argued that the inability to speak English is a poor basis for either conclusion, as the tendency of Latinos to live in "tight-knit" communities results in many not speaking English well after 10 or more years.[137]

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[127] Ibid.

[128] Ibid.

[129] Ibid.

[130] PDS Report, p. 16; Delgado Testimony, *Hearing Transcript*, vol. 2, p. 353. *See also* Klaidman, "Courts Stumble," p. 17. *See generally* Houston, "Blacks and Hispanics Must Pay More to Get Out of Jail; Inequalities are in Bail System," *The Hartford Courant*, June 16, 1991. This allegation has emerged in communities other than the Mount Pleasant area of the District. For example, in a study conducted in Hartford, Connecticut, by the *Hartford Courant*, the paper found that getting out of jail was substantially cheaper for whites, and on average, judges set bonds 84 percent higher for black men and 69 percent higher for Hispanic men. The largest disparity overall was in bonds set by police for Hispanic women with apparently clean records, in which their average bond was *197 percent higher* than the average for all white women.

[131] Kathy Boyer, Director, Administrative Services, Pretrial Services Agency, telephone interview in Washington, D.C., July 24, 1992.

[132] Ibid. Of the remainder, 9.6 percent of the defendants were "no papered," and 2.5 percent were delinquency proceedings.

[133] Ibid. For the years 1989-1991, PSA identified a total of 314 defendants who were interviewed by the agency, classified as Spanish speaking only, and tracked through the criminal justice system. Of these defendants, 96.5 percent were male and 3.5 percent were female. PSA found that on average, 52 percent of Latino defendants were released on nonfinancial or personal recognizance (PR) bonds between 1989-1991, compared with an average of 51 percent of defendants in the general population released on PR bonds during the same period.

[134] Ibid. PSA found that, on average, 33 percent of the Spanish-speaking defendants were required to post a financial bond, whereas for the remaining defendants the figures were as follows: 1989—42.5 percent, 1990—44 percent, and 1991—51 percent. The average bond amount for the Latino defendants was $3,387, whereas the average bond amount for the remainder of the arrestees was $4,926.

[135] Ibid. PSA found that only 21.7 percent of the Spanish-speaking defendants were able to post bond when a financial bond was set, whereas 28.2 percent of all defendants were able to post bond. Ibid.

[136] Klaidman, "Courts Stumble," p. 16. *See also* Delgado Testimony, *Hearing Transcript*, vol. 2, p. 353.

[137] Ibid.

Bail Bondsmen. The increased likelihood of Latino defendants remaining in jail pending trial may be in part due to their difficulty in finding bail bondsmen who speak Spanish.[138] According to a report prepared by PDS and submitted to the Commission, of the five bonding companies contacted by PDS, only one had a Spanish-speaking employee, and the District phone directory does not advertise any bondsmen who speak Spanish.[139] Moreover, she testified, bondsmen may harbor the belief that all Latinos are undocumented and, therefore, pose a greater risk of flight.[140] As a result, bondsmen are less likely to service Latinos or will charge Latinos higher fees than those charged to non-Latinos, thus forcing them to remain in jail pending trial.[141]

Department of Corrections

The D.C. Department of Corrections houses defendants who have been convicted of a crime and are either awaiting sentencing or serving sentences.[142] As of October 27, 1992, the Department of Corrections reported that 204 Latinos were incarcerated in various facilities and accounted for a total of 2.5 percent of all persons incarcerated in the D.C. Department of Corrections' Detention Facility (jail), seven sentencing institutions, Community Correctional Centers (CCC), Out-of-State Prisons (ICC), and Electronic Monitoring.[143]

According to the Visitors' Services Center (VSC), a community organization of volunteers working with inmates at the jail and their families,[144] the number of Latinos processed through the D.C. jail alone is closer to 15 per week, and the total number of Latino detainees in the jail is in the range of 60-100, at any given time.[145]

VSC handles approximately 20,000 requests from inmates and their families for various services per year and actively seeks out Spanish-speaking inmates in the jail through daily printouts.[146] Carlos Mendoza, the only Spanish-speaking staff member at VSC, advised the Commission that after inmates are identified as Latino, he interviews them and offers the center's services.[147] It was alleged that since there are no full-time interpreters or bilingual correctional officers at the women's jail facility and only two bilingual officers at the men's facility—both on the midnight to 8 a.m. shift—Mr. Mendoza is often called upon to fill this void.[148]

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[138] *See* Klaidman, "Courts Stumble," p. 17; *see also* PDS Report, pp. 15-18.

[139] PDS Report, pp. 15-18.

[140] Ibid. *See also* Klaidman, "Courts Stumble," p. 17, suggesting that other defense attorneys have noted that one reason Latino defendants are often forced to stay in jail awaiting trial is that bail bondsmen systematically refuse to bail them out, to which the bondsmen respond that they lack contacts and informants in the Latino community.

[141] Ibid.

[142] Indices, p. 359. Sentenced felons and misdemeanants who are awaiting transfer to the D.C. Correctional Complex in Lorton, Virginia, are also held there. Ibid.

[143] The current incarcerated population housed in the D.C. jail and seven sentencing institutions at the Lorton complex is 8,547. Sylvester Ezeani, Research Report—Demographic Characteristics of the Incarcerated Population—DCDC (First Quarter—FY 1992), Prepared by the Office of Planning Analysis, D.C. Department of Corrections. The findings relating to most of the demographic characteristics are based on self-reported data. Ibid.

[144] VSC provides written information on job and training programs, third-party custody programs, drug and alcohol treatment, housing, how to get a social security card or duplicate birth certificate, etc. VSC also provides assistance to inmates in contacting family members, parole officers, probation officers, and attorneys; referring inmates to attorneys; drafting letters; locating records; preparing taxes; etc.

[145] Mendoza Interview, July 10, 1992. *See also* Holleran-Rivera Testimony, *Hearing Transcript*, vol. 2, p. 372 (estimating that there are about 200 Latinos in the District correctional facilities, based on estimates that were used by the Task Force on Racial and Ethnic Bias). DCDC disagrees with estimates given by VSC and stated that individuals housed in the detention facility in a pretrial status may have been counted along with individuals convicted or sentenced. Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Office of the Corporation Counsel, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992 (addressing pertinent portions of this chapter) (hereafter Ruiz Letter, Oct. 27, 1992).

[146] Ibid.

[147] Ibid. *See also*, Brochure from Visitors' Services Center, *Examples of Requests Handled.* Upon arrival at the facility, each inmate is provided an information sheet explaining the services offered by VSC in English. However, at the bottom of the sheet is a hand-written note in Spanish, "Si tu solo hablas Español y necesitas ayuda me gustaria entrevistarte, Amigo Siempre—Carlos J. Mendoza," or, in English, "If you only speak Spanish and need help, I would be happy to interview you," Always a friend—Carlos J. Mendoza. Ibid.

According to information provided to the Commission by the District's Office of Corporation Counsel (OCC), the majority of the Latino prison population is in need of interpreters.[149] Conservative estimates place the percentage of Latinos in need of interpreters at the central facility at 79 percent and 37 percent at the Occoquan facility.[150]

Although the Commission heard allegations that the adjustment board procedures manual (inmate handbook of rules and regulations of the jail) had not been translated into Spanish and was available only in English,[151] in October 1992, the Commission was provided with a Spanish language version of the Department of Corrections' Inmate Handbook on rules and regulations. According to the OCC, it was completed in May 1990 and has since become a regular issuance to Latinos entering each institution of the Department of Corrections.[152]

The OCC reports that the average educational background of the Hispanic population in Department of Corrections facilities is 2nd grade through 9.4 years of education, with approximately 1 percent having completed high school or obtained a G.E.D. Since June 1991, the Department of Corrections has had an active English as a Second Language (ESL) program for all residents who are limited in the English language.[153] Since the implementation of this program, the Department reports that it has seen a 70 percent increase in the participation of the limited-English-speaking population in programs operated by the Department. In addition, the OCC advised the Commission that Department of Corrections has hired a coordinator for limited-English-speaking inmates to ensure that all programs throughout the Department are made accessible to them.[154]

Only upon completion of the ESL program do residents have the opportunity to go on to the Adult Basic Education (ABE) program and later obtain their GED.[155] According to the OCC, the Department of Corrections has implemented sensitivity training programs for all staff members in the Department regarding the special needs of the limited-English-speaking population.[156] In October 1992, the Commission was advised that the Department of Corrections agrees that "often times language barriers for Spanish-speaking inmates make them feel as though they do not have the appropriate skills to take advantage of the many programs Department of Corrections has to offer."[157]

At the Lorton Correctional Institute in Lorton, Virginia, officials and volunteers say the most troubling effect of the language barrier for Spanish-speaking inmates is that it prevents them from earning "good time."[158] Under the District's code, a person convicted of a criminal offense and imprisoned in District correctional facilities, whose conduct conforms with all applicable institutional rules, is entitled to earn institutional good time credits. These credits are used by prisoners to win early release.[159] In addition to institutional good time credits, inmates may also earn educational good time through completion of educational or vocational programs.[160]

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[148] Ibid.

[149] Ibid.

[150] Ibid. Figures are not available for other facilities within the Department of Corrections.

[151] Testimony of Carlos Mendoza, Visitors' Services Center (July 10, 1992).

[152] Ruiz Letter, Oct. 27, 1992, p. 5.

[153] Ruiz Letter, Oct. 27, 1992, attachment 5 (Update on the Demographic Profile of the Hispanic/Latino population in the D.C. Department of Corrections).

[154] Ibid.

[155] Ibid.

[156] Ruiz Letter, Oct. 27, 1992, p. 5. According to the OCC, "Even though a Latino inmate may have special problems in adjusting to imprisonment, DCDC takes extra precautions to ensure that there is an understanding of the rules and regulations of the Department." Ibid.

[157] Ibid., p. 6.

[158] Davis Testimony, *Hearing Transcript*, vol. 2, p. 340; *see also* Mendoza Interview, Visitors' Service Center, July 10, 1992.

One witness at the Commission hearing testified that these programs are not available for non-English-speaking defendants due to insufficient bilingual staff. Angela Jordan Davis, director of the D.C. Public Defender Service, testified:

> As far as the programs that are available in the Department of Corrections, there are not many. There are not a lot of rehabilitative programs there to start with, but the ones that are available, they are simply unavailable to people who don't speak English. Unavailable because there's one bilingual teacher that I'm aware of in the educational programs. Of the 66 teachers in the Department of Corrections, there's 1 that's bilingual.[161]

The Department of Corrections employs a total of 70 Hispanics in various areas ranging from medical personnel to correctional supervisors and officers. In October 1992, the Department of Corrections reported that there has been an active recruitment process to hire additional Spanish-speaking staff for positions as psychologists, case managers, educators, vocational staff, chaplains/chaplain assistants, medical personnel, correctional supervisors, and correctional officers to meet the needs of the limited-English population as it continues to increase.[162]

Other programs and services available to Latino inmates include a Spanish substance abuse program at the Occoquan facility, which houses the third highest number of Latinos of all facilities.[163] An active Street Law program exists to assist inmates in preparation of legal documents and self-representation. There is also currently one bilingual psychologist on staff who is responsible for providing mental health services to Latinos in all facilities and one bilingual caseworker to address the needs of the Latino population at the Occoquan facility.[164]

The Family Division

The Family Division of the Superior Court has jurisdiction over divorce and separation actions, including related proceedings for alimony, child custody and support, and other familial actions.[165] Much of the difficulty Latinos face when working within the framework of the family courts system is as a result of the system itself. According to Leslye E. Orloff, director of Clinica Latina at Ayuda:

> Most Latino clients in the District come from countries whose legal system is based on a civil law model rather than our common law model. Thus our community's expectations of how the judicial system works is significantly different from reality . . . . Clients who come from countries with [a] civil law system have great difficulty understanding that their word, through testimony, has any value. Further, many persons in the Latino community were raised in countries where the judiciary is an arm of a repressive government and does not function independently. Persons who prevail in court are those with the most money and the strongest ties to the ruling government. *Thus the concept that justice can be obtained in the court system is not embraced by many Latino clients who must instead learn to trust our legal system through their experiences in courts. . . .* Latinos seeking redress through the civil court process must initially overcome any fear and suspicion of the judicial system.[166]

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[159] D.C. Code Ann. § 24-428(a) (1989).

[160] D.C. Code Ann. § 24-429 (1989). Those residents who are housed in the central facility are in job training apprenticeship programs such as electrical, culinary, dental, and plumbing. Currently, 3 of the more than 20 inmates at the central facility are enrolled in a vocational or apprenticeship program (1 in the electrical engineering apprenticeship program, 1 in the plumbing apprenticeship program, and 1 in the brick masonry program). Ruiz Letter, Oct. 27, attachment 5.

[161] Davis Testimony, *Hearing Transcript*, vol. 2, p. 340.

[162] Ruiz Letter, Oct. 27, 1992, attachment 5.

[163] Ibid.

[164] Ibid.

[165] The Family Division also oversees legally prescribed support enforcement actions--e.g., child support enforcement actions, alimony, etc.; proceedings regarding children who are allegedly neglected, delinquent, or requiring supervision; civil suits brought by parties seeking protection from intrafamily offenses. In intrafamily offense proceedings, the offender is treated as a criminal defendant for violating a biological or legal relative, a roommate, or an intimate contact. D.C. Code Ann. §§ 11-1101 (1989). *See also* § 16-1001 (5)(a) & (b).

[166] Testimony of Leslye E. Orloff, Director, Clinica Latina, Ayuda, Inc., before the Round Table Forum on Hispanics in the Courts, Nov.

Many family law disputes can be resolved through mediation, without the necessity of costly and time-consuming court appearance. One attorney suggested to the Commission that this may not be a viable option for non-English-speaking Latinos. Ana Calderon, a law fellow at Neighborhood Legal Services, stated:

> I do not . . . recommend that my Spanish-speaking clients use the Domestic Mediation Branch of the Superior Court because none of the mediators there is able to speak Spanish [and] Hispanics are thus unable to take advantage of mediation as a means of resolving disputes due to lack of adequately trained mediators.[167]

Protective Orders

Ayuda, Inc., is a nonprofit legal services organization in the District that serves Latino and foreign-born persons in the areas of immigration and family law.[168] The entire staff at Ayuda is bilingual. Many of Ayuda's clients are immigrants from El Salvador.[169] In 1991 Ayuda worked with or in some way assisted over 1,000 referrals, including battered women and children, regardless of whether they chose to seek court intervention.[170] Of all referrals seen by Ayuda, only 60 to 80 percent opt to proceed further to court or some other adjudicative body.[171] Ayuda does not receive any D.C. government funding for the services it provides to the Latino community.[172]

One program offered by Ayuda is the Clinica Legal Latina, or the domestic violence, domestic relations program, through which Ayuda attorneys handle cases for divorce, child support, child custody, child abuse and neglect, and civil protective orders.[173] Ms. Orloff testified that Ayuda represents "virtually all [Latinas] who seek civil protection orders at Superior Court."[174] Ms. Orloff further stated that Ayuda assists more Latina women seeking child support than the Office of Corporation Counsel (OCC), a part of the executive branch, that is officially charged with doing so.[175] Furthermore, Ms. Orloff stated that in the past 3 years, the OCC has represented virtually no Spanish-speaking clients in civil protection order actions (CPO), and even in the most serious cases, OCC had never accepted a referral from Ayuda.[176]

In response, counsel for the OCC told the Commission that it handles cases involving Spanish-speaking clients in the same fashion that it handles cases involving non-Spanish-speaking individuals, with the only difference being the use of an interpreter. Moreover, OCC stated that it has never been OCC's policy to decline representation of any individual who comes to the Citizen's Complaint Center because that individual did not speak English but, instead, insists that the interviewer at the Citizen's

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2, 1991, p. 4-5 (hereafter *Orloff Testimony before Round Table Forum*).

[167] Affidavit of Ana Calderon, Law Fellow, Neighborhood Legal Services of Washington, D.C., Aug. 27, 1992, pp. 1-2.

[168] Testimony of Suzanne Jackson on behalf of Ayuda, Inc., on the Department of Human Services and the Hispanic Community before the Committee on Human Resources of the Council of the District of Colombia, Feb. 21, 1991, p. 1 (hereafter cited as Jackson Testimony before HRC). In FY 1991, Ayuda, which means "help" in Spanish, received approximately 39 percent of its funding through private foundation grants, 27 percent through the United Way, and 16 percent through fees and miscellaneous services charged to its clientele.

[169] Ibid.

[170] Orloff Testimony, *Hearing Transcript*, vol. 2, p. 359.

[171] Ibid.

[172] Orloff Testimony before Round Table Forum, p. 1.

[173] Jackson Testimony before HRC. Ayuda's representation of battered women and children includes housing, public benefits, immigration, and employment.

[174] Orloff Testimony before Round Table Forum, p. 1.

[175] Ibid. *See also* D.C. Code Ann. §§ 16-1002(b)(2), 16-1003 (1989) ("Petition for Civil Protection—'upon referral by the United States attorney, or upon application of any person or agency for a civil protection order with respect to any intrafamily offense committed or threatened, the Corporation Counsel may file a petition for civil protection with the Family Division. In the alternative to referral to the Corporation Counsel, a complainant on his or her own initiative may file a petition for civil protection in the Family Division.'").

[176] Ibid., p. 3.

Complaint Center determine whether or not to accept the representation of the potential client, based upon factors such as the credibility of the victim, the seriousness of the offense, and the seriousness of the legal issues involved.[177]

The OCC indicated, however, that it was the past practice to call Ayuda "when a Spanish-speaking individual came to the Citizen's Complaint Center to determine if Ayuda was able to represent such individual."[178] The OCC explained that:

> This policy was adopted because the OCC section handling domestic violence cases had no Spanish-speaking attorneys, and it was thought preferable that the case be handled by an attorney who could speak directly with the client rather than speaking through an interpreter. In the event that Ayuda was unable to represent the individual, OCC would accept the case or insure that a pro bono attorney was obtained for the client.[179]

According to the OCC, this is no longer the practice, because Ayuda's caseload is so large that Ayuda has advised the OCC it can no longer take referrals. The OCC has indicated that it has since represented several Spanish-speaking clients.[180]

The OCC has further advised the Commission that within the past 6 months it has created a new Family Services Division to serve clients in domestic violence, child support, and child abuse and neglect cases. Nevertheless, the Child Support section currently has only one Spanish-speaking attorney. Neither the Domestic Violence Section (which has only one attorney and one paralegal) nor the Child Abuse and Neglect Section (consisting of nine attorneys) has any bilingual staff.[181] Since June 1992, the OCC has handled three domestic violence cases involving Spanish-speaking clients. OCC currently has an outstanding caseload of 50 domestic violence cases.[182] According to the OCC, Spanish-speaking individuals rarely come to the OCC requesting representation and are practically less than 1 percent of their domestic violence cases.[183]

Prosecution of Domestic Violence Cases

Whereas the OCC is responsible for obtaining protective orders in domestic violence cases, the U.S. Attorney's Office prosecutes accompanying criminal charges in such cases in the District of Columbia. Leslye Orloff of Ayuda testified that in cases in which the abuser and the victim are related, "the U.S. attorney has adopted a policy which . . . requires the victim in a domestic violence case to appear in court the next day," thus "putting . . . the victim in a situation where she's where the batterer is. . . ."[184] Moreover, Ms. Orloff continued, "with the information problems at the court, . . . if [the victim] can't find the U.S. attorney's office, then her case doesn't get papered, no matter how serious it is."[185] Ms. Orloff testified that Ayuda had been contacted by at least three Hispanic battered women whose cases were not papered (that is, no charges were brought against their assailant) allegedly because it took the women too long to find the correct office in the courthouse for papering, and they arrived after the U.S. attorney made the decision not to prosecute the defendant and all other witnesses had departed.[186]

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[177] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, and Arlene Robinson, Deputy Corporation Counsel, Family Services Division, letter to Stella G. Youngblood, Attorney-Advisor, U.S. Commission on Civil Rights, Sept. 22, 1992 (hereafter Ruiz Letter, Sept. 22, 1992).

[178] Ibid.

[179] Ibid.

[180] Ibid.

[181] Ibid.

[182] Ibid.

[183] Ruiz Letter, Oct. 27, 1992, p. 3.

[184] Orloff Testimony, *Hearing Transcript*, vol. 2, p. 371.

[185] Ibid.

[186] Ibid. Ms. Orloff further testified that when they arrived, they were told that their cases were not papered because they had not arrived at the court house on time. "There was no one at information who spoke Spanish and they were shuffled from office-to-office until they finally found the correct location." Orloff Testimony before Round Table Forum, pp. 3-4. As discussed in the previous section of this chap-

In an October 1992 letter to this Commission, the U.S. Attorney for the District of Columbia, Jay Stephens, disputed the allegation that charges are dropped "if the victim simply fails to appear in the courthouse":

> The presence of the victim at the time of papering is not a determinative factor, although we do prefer to have victims come to the courthouse for several sound reasons. First, at the scene of the incident the police often have difficulty in determining the relationship of the parties, the nature of the assaultive conduct, the occurrence of previous acts of violence, and the degree of potential future danger to the victim, particularly in those cases where the victim solely speaks Spanish. The presence of the victim at the time of papering permits us to get our highly-trained, bilingual [Victim] Advocates involved in exploring these matters. Second, it provides our Office with the opportunity to talk to the victim when the defendant is still locked-up pending arraignment or presentment, and victims are never required to confront their abusers at that time. And third, the Advocates can explain to the victim her legal rights, the options open to her, and the importance of pursuing a case against a violent offender.[187]

According to Mr. Stephens, the "Victim Advocates" is one of several initiatives developed over the past year to implement a new domestic violence mandatory arrest law. An advocate is assigned to each victim on the morning of case intake or at the time an arrest warrant is presented to the U.S. attorney's office for consideration. The advocate provides:

> counseling and information regarding such issues as emergency housing, social services, civil protection orders, and the criminal legal process. Moreover, they explain immigration issues which may be of acute concern to some Latinos. . . . Two of the six Advocates are fluent in Spanish, and arrangements are in place to obtain translators on short notice should the need arise.[188]

Ayuda testimony had illustrated to the Commission how failures in communication due to insufficient bilingual personnel at all levels of contact with the justice system—beginning with the 911 emergency communications system and continuing through the police department and the court system—were so serious as to jeopardize the safety and well-being of non-English-speaking Latinos, and particularly women.[189] Whether the U.S. attorney's new initiatives, especially the programs specifically aimed at addressing the needs of the Latino community, will prove effective toward resolving all of the issues relevant to domestic violence cases remains to be seen. It is clear, however, that doubts within the Latino community as to the U.S. Attorney's Office's sensitivity to the needs of the Latino community, and particularly of Latinas, persist and affect the confidence of that community in the effectiveness and fairness of the system. Those negative perceptions should be addressed by the Federal prosecutor directly and immediately with representatives of that community, including, among others, Ayuda.

Child Support

Latinos in need of assistance in obtaining child support or enforcement of a child support order may be discouraged from doing so, since the District's Office of Paternity and Child Support Enforcement is located in the same building as the central office of the Immigration and Naturalization Service.[190] Furthermore, once arriving at the office, an applicant must fill out forms that are not in Spanish and are difficult to understand even for English speakers because of unexplained, unfamiliar abbreviations. A paralegal at Ayuda who is familiar with such forms stated as an example, "one form uses the abbreviation 'BOW', without explanation that it stands for 'Born Out of Wedlock.'"[191]

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ter, the courts may only detain a defendant for 48 hours after arrest, and if he is not arraigned or papered within that period, he must be released.

[187] Jay B. Stephens, U.S. Attorney, U.S. Department of Justice, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 15, 1992 (responding to several allegations made at the Commission hearing) (hereafter Stephens Letter, Oct. 15, 1992)

[188] Ibid.

[189] *See* Orloff Testimony, *Hearing Transcript*, vol. 2, pp. 356-60, 371; Orloff Testimony before Round Table Forum, pp. 3-4; Orloff Written Testimony, *Hearing Transcript*, pp. 2-3, 9.

[190] Affidavit of Lillian Perdomo, Paralegal, Clinica Latina, Ayuda, Aug. 28, 1992, p. 2.

[191] *Id.*

Ms. Orloff testified that the Child Support Enforcement Division has one bilingual attorney and that attorney has a non-Spanish-speaking caseload.[192] This was confirmed by the OCC, which advised the Commission:

> The Child Support Section represents Spanish-speaking Hispanic clients. Every attempt is made to assign child support cases involving Hispanics to [the bilingual attorney]; however, it is not always feasible to do so.[193]

OCC attributes this to the fact that the Child Support Section does not have an intake procedure in which the parties meet prior to the hearing, and typically, the first encounter with the parties is on the day of the hearing. OCC states that "the only way to ensure that [its bilingual attorney] would meet every Spanish-speaking client would be to require her to remain on alert each day for calls from as many as five different courtrooms requesting her appearance. . . . [which] would be impracticable."[194] OCC does state that in situations where the client is Spanish speaking, the attorneys are instructed to call for an interpreter.[195]

As a practical matter, by turning to Ayuda for representation, Latino clients often have no access to services that would be provided them if OCC were prosecuting their cases, such as parental locators, tax intercept, lottery intercept, or a number of other Federal programs that should be available to parents of children who are not receiving parental support payments.[196] According to information provided by the OCC, this condition is due to the fact that the Child Support Section only represents non-AFDC custodians who request IV-D services through the Office of Paternity and Child Support Enforcement (OPCSE) of the Department of Human Services. The OCC's representation of Latino clients is totally dependent upon referrals from OPCSE.[197] This means that Latinos who wish to obtain these services are faced with the choice of firing their Ayuda attorney, with whom the client can communicate, to seek representation by an OCC attorney, with whom the client may not be able to communicate.

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[192] Orloff Testimony, *Hearing Transcript*, vol. 2, p. 366.

[193] Ruiz Letter, Sept. 22, 1992.

[194] Ibid.

[195] Ibid.

[196] Orloff Testimony, *Hearing Transcript*, vol. 2, p. 367.

[197] Ruiz Letter, Oct. 27, 1992, p. 4.

Chapter 6. Equal Employment Opportunity in District Government

In 1985, through submission of the *Latino Community Agenda* report, the District's Latino community formally petitioned the District government to address the need for bilingual personnel in public-contact positions, particularly in the areas of human services, transportation, consumer and regulatory affairs, police, housing, and employment services.[1] Six years later, following the disturbance in Mount Pleasant, the Latino community issued a second report, the *Latino Blueprint for Action*, in which it again raised many of the same concerns for bilingual personnel. Despite these repeated appeals, there remains a scarcity of bilingual personnel in public-contact positions throughout the District government, which has a direct effect on the delivery of government services to the Latino community.

In addition, the overall number of Hispanics in the District government is disproportionate to their representation in the District's population. In 1985 the *Agenda* report formally brought to the District's attention the fact that Hispanics comprised less than 1 percent of the District government's work force.[2] The subsequent *Blueprint* report observed that the number of Hispanics in the District government had increased to only 1.5 percent in 6 years,[3] although Hispanics are now 5 to 11 percent of the District's population, depending on whether Census or other figures are relied upon.

The Need for Bilingual Personnel

The Commission has found an urgent need for bilingual personnel in the District of Columbia government. This need is compounded by widespread unavailability of bilingual forms, informational materials, and signage. Without government employees with whom they can communicate, or bilingual materials, members of the Hispanic community find it difficult to apply for services to which they are entitled. During the Commission's investigation, the need for additional bilingual personnel was evidenced in every department and agency examined. The seriousness of these shortages, and their impact on the ability of limited-English-proficient Latinos to obtain critical government services is described throughout this report.

Lorraine Green, director of the D.C. Office of Personnel, testified that the need for bilingual personnel had been identified in the Fire Department, Police Department, Department of Human Services, and "just about all of the larger agencies would require [bilingual] service, especially where you have persons that are meeting the public, your front line workers."[4] According to William Vazquez, the Hispanic program officer in the D.C. Office of Personnel, the need for bilingual personnel in the District agencies had been identified as early as 1980, when he was the director of the Office on Latino Affairs, but it has not been adequately addressed due to a lack of commitment "on the part of the managers or the selecting officers."[5] Mr. Vazquez testified: "I think there is a clear resistance in regards to the question of equity, frankly, and the opportunity to serve as a public servant. Yes, the answer is I believe that the managers are a critical part of that selection process. They are the ones that get the certificates of employment; they are the ones that have to make the decision. Our responsibility is to communicate to them, with a limited staff, what kind of things they need to do."[6]

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[1] The Ad Hoc Coalition for a Latino Community Agenda, D'Emilio Associates, and Nena Terrell, *Latino Community Agenda* (1985), p. 28 (hereafter *Latino Community Agenda*).

[2] Ibid., p. 27.

[3] D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action, Final Recommendations to the District of Columbia Government*, October 1991, p. 45 (hereafter *Latino Blueprint*).

[4] Lorraine Green, Director, D.C. Office of Personnel, testimony, *Hearing Transcript*, vol. 3, p. 47.

[5] Ibid., pp. 49-50.

At the time of the Commission hearing, bilingualism had seldom been a ranking or selective placement factor in District government job vacancy announcements. Among the few prior vacancy announcements that listed bilingualism were vacancies for the Police Department, the Fire Department, and vocational rehabilitation specialists.[7] Mr. Vazquez testified that "[w]e have communicated where there is a large influx of Hispanic clients coming in that they should consider that as a ranking factor. To date, there are very few of those positions. I am led to believe, and I understand, that this administration will be forthcoming in regards to that particular responsibility in adding that as part of the process of selection."[8]

In her remarks before the Commission, the Mayor expressed that commitment, stating: "We will add bilingual capability as a selective ranking factor for appropriate positions throughout the government, recognizing this special skill and the benefits it brings to the government."[9] In the past it was up to the individual agencies to identify the need for bilingual service delivery and to reflect this need in the position descriptions. However, D.C. Office of Personnel Director Lorraine Green indicated that, in the future, this will be a joint effort with her agency.[10] Subsequent to the Commission hearing, bilingualism had been established as a selective placement factor for 25 positions, many of which were related to health care.[11]

Some jurisdictions, such as Illinois[12] and California,[13] statutorily require formal assessment of the need for bilingual personnel and submission of reports to the legislature summarizing the assessments. For instance, the California code requires:

> Each state agency shall conduct a survey of each of its local offices every two years to determine all of the following:
>
> (a) The number of public contact positions in each local office.
>
> (b) The number of bilingual employees in public contact positions, and the languages they speak, other than English.
>
> (c) The number and percentage of non-English-speaking people served by each local office, broken down by native language.
>
> (d) The number of anticipated vacancies in public contact positions.
>
> (e) Whether the use of contracted telephone based interpretation services in addition to bilingual persons in public contact positions is serving the language needs of the

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[6] Ibid., pp. 50-51.

[7] Ibid., p. 52; Sara Cruz, Personnel Staffing Specialist, D.C. Servicing Personnel Office #1, D.C. Office of Personnel, testimony, *Hearing Transcript*, vol. 1, p. 52.

[8] Vazquez Testimony, *Hearing Transcript*, vol. 1, p. 52.

[9] Sharon Pratt Kelly, Mayor, District of Columbia, testimony, *Hearing Transcript*, vol. 1 (opening statement).

[10] Green Testimony, *Hearing Transcript*, vol. 3, p. 45.

[11] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992, attaching Selective Placement Factor: Established Bilingual Positions list.

[12] The State of Illinois statutorily requires State agencies to submit annual assessments of the need for bilingual personnel to the Department with overall responsibility for personnel: "The Department shall formulate and administer recruitment plans and testing of potential employees for agencies having direct contact with significant numbers of non-English speaking or otherwise culturally distinct persons. The Department shall require each State agency to annually assess the need for employees with appropriate bilingual capabilities to serve the significant numbers of non-English speaking or culturally distinct persons. The Department shall develop a uniform procedure for assessing an agency's need for employees with appropriate bilingual capabilities. Agencies shall establish occupational titles or designate positions as "bilingual option" for persons having sufficient linguistic ability or cultural knowledge to be able to render effective service to such persons. . . . The Department shall make annual reports of the needs assessment of each agency and the number of positions calling for non-English linguistic ability to whom vacancy postings were sent, and the number filled by each agency. . . . Such policies, program reports and needs assessment reports shall be filed with the General Assembly by January 1 of each year and shall be available to the public." Ill. Ann. Stat. ch. 127, para. 63b109(6) (Smith-Hurd Supp. 1992).

[13] Cal. Gov't Code §§ 7299.4, 7299.6 (West Supp. 1992).

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> people served by the agency.
>
> (f) Any other relevant information requested by the State Personnel Board . . .[14]

There is no such statutory requirement in the District of Columbia. The individual District government agencies have never conducted a formal bilingual needs assessment, nor has there been a formal assessment of the overall bilingual needs of the government.[15] In April 1992, Mayor Kelly issued an order that set forth goals and guidance for increasing service delivery to the District's diverse population, such as including bilingualism as a ranking or selective placement factor for positions, posting of bilingual signage, sensitivity training, and outreach.[16] However, the order does not require the District agencies to conduct a formal bilingual needs assessment, nor is there a time frame for implementation of the order's goals.

The use of bilingualism as a hiring factor would be particularly beneficial in agencies such as the Income Maintenance Administration that service a large number of Hispanic clients. Turnover in employment at the Income Maintenance Administration averages 100 employees per year through normal attrition.[17] Therefore, despite the District's downsizing, there should be sufficient opportunities to increase the administration's bilingual personnel. At the time of the Commission hearing, IMA Administrator James Butts indicated that a currently posted vacancy announcement for social service representatives did not list bilingualism as a ranking or selective placement factor.[18] Mr. Butts said, however, that bilingualism will be given "a priority" in making the final selections.

Hispanic Representation in the District's Work Force

Due to the absence of a computerized database in the D.C. Office of Personnel, statistics on the hiring of Hispanic employees are limited. There are currently approximately 529 Hispanic employees in the District government agencies under the Mayor's authority, out of a total of approximately 31,406 employees.[19] In the independent agencies, it is estimated that there are approximately 216 Hispanic employees,[20] out of a work force of approximately 19,723.[21] Hispanics, therefore, are 1.5 percent (745 employees) of the District's total government work force. Of those Hispanic employees in agencies under the Mayor's authority, approximately 51, or 10 percent, are in term or temporary positions.[22]

Of even greater concern is the fact that while the Hispanic population has grown, the number of Hispanic employees has declined. It is estimated that there were 380 Hispanic employees in the agencies under the Mayor's authority at the conclusion of 1986,[23] 131 of whom were hired during fiscal year 1986.[24] This number grew to 560 by 1988, an increase of over 30 percent,[25] but had dropped to 529 by December 1991.

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[14] Cal. Gov't Code § 7299.4 (West Supp. 1992). The code further requires that the results of the surveys be compiled and submitted biennially to the legislature. *Id.* § 7299.6.

[15] The 1985 *Latino Community Agenda* report called on the District Government to conduct a formal assessment of the Government's need for bilingual services. *Latino Community Agenda*, p. 28.

[16] Mayor's Order 92-50, Mayor's Multicultural Service Delivery Initiative (Multicultural Initiative)(Apr. 29, 1992).

[17] James Butts, Administrator, Income Maintenance Administration, interview in Washington, D.C., Dec. 9, 1991.

[18] James Butts, Administrator, Income Maintenance Administration, testimony, *Hearing Transcript*, vol. 1, p. 302.

[19] Vanessa Ruiz, Deputy Corporation Counsel, Government of the District of Columbia, memorandum to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Jan. 24, 1992 (attachment 2A).

[20] Hispanic Employees in District Government by Agency, May 17, 1991.

[21] District of Columbia, Office of Policy and Program Evaluation, *Indices: A Statistical Index to District of Columbia Services*, vol. VIII (Washington, D.C., August 1991), p. 126.

[22] Vazquez Testimony, *Hearing Transcript*, vol. 3, p. 57.

[23] District of Columbia, D.C. Office of Personnel, *The Hispanic Employment Program, 1987 to Present* (Jan. 1991), p. 4 (hereafter cited as *Hispanic Employment Program*).

Hiring opportunities have been more limited in recent years, particularly during the 1991 hiring freeze and reduction-in-force. The proposed layoffs had been a source of concern to the Latino community, for fear that a reduction would have a disproportionate impact on the Hispanic population generally. The potential impact was also recognized within the D.C. Government by the Hispanic program officer in the D.C. Office of Personnel in a memorandum to Director Lorraine Green:

> The Hispanic Employment Program recognizes the need to downsize District government. The Hispanic Employment Program estimates there are some 106 Hispanic employees whom we regard to be "at risk" under the proposed reductions. While this number of Hispanic employees appears small relative to the overall proposed reductions, they represent more than **21%** of **all** Hispanic employees under the Mayor's authority. When reviewing how to downsize their respective agencies agency directors should consider the Affirmative Action implications of their decisions. In addition, agency director's should also take in account that any significant reduction in Hispanic employees will negatively impact on the District's service delivery to the Hispanic community.[26]

Of the total 162 employees laid off as of December 31, 1991, only 1 was Hispanic.[27] Despite hiring freezes and downsizing, hiring opportunities still remain. For instance, between January and November 1991, 1,061 positions were authorized to be filled in agencies under the Mayor's hiring authority.[28] These positions included "200 medical staff, 50 social workers and related occupations, 300 correctional officers and other critical public safety positions and more than 200 front-line service workers in grades DS-01 through DS-05. Summer interns and seasonal employees [were] also included in these hires."[29]

The District government's work force is divided into those agencies that are within the Mayor's hiring authority and those agencies and branches of government that are not. The processing of applications for employment in those District agencies that are under the Mayor's authority is centralized within the D.C. Office of Personnel, which has a Latino Employment Services Center on Belmont Road in the Adams Morgan community. Established in 1985, the Latino Employment Services Center is staffed with personnel from both the D.C. Office of Personnel and the D.C. Department of Employment Services. It provides assistance and information regarding employment in the District government,[30] the Federal Government, and in the private sector, as well as information regarding employment training.[31]

The agencies within the Mayor's hiring authority are individually responsible for identifying their hiring needs and preparing and forwarding position descriptions for vacancies to the D.C. Office of Person-

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[24] District of Columbia, Mayor's Office on Latino Affairs, *Annual Report 1986* (1986), p. 12. The Office on Latino Affairs' annual report states: "During FY 1986, DCOP [D.C. Office of Personnel] received 979 applications from Latinos for government employment (several people applied for more than one job) and 131 were hired." Ibid.

[25] *Hispanic Employment Program*, p. 4.

[26] See Willie Vazquez, Assistant to the Director, Hispanic Program Officer, memorandum to Lorraine A. Green, Director, D.C. Office of Personnel, Sept. 3, 1991, p. 1. (emphasis in original).

[27] Vanessa Ruiz, Deputy Corporation Counsel, Government of the District of Columbia, memorandum to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Jan. 24, 1992 (attachment 3E).

[28] Lorraine A. Green, Director of Personnel, Office of Personnel, Government of the District of Columbia, Letter to the Editor, *Washington Post*, Nov. 17, 1991.

[29] Ibid.

[30] Unlike employment in the Federal Government, for which full citizenship is generally a requirement, (Federal Personnel Manual, Chapter 300, Qualification Requirements (General), Subchapter 11, Citizenship (Jan. 29, 1991)), the District government does not require citizenship, except for uniformed Police Department and Fire Department positions. District Personnel Manual, Chapter 8, Part I, Section 808, Citizenship Requirements. Section 808 states: "Appointments to uniformed positions in the Police and Fire Departments shall be limited to persons who are citizens of the United States. A person who is a United States citizen, or a non-citizen authorized by the Immigration and Naturalization Service to be employed in accordance with part 109 of title 8 of the Code of Federal Regulations, may be appointed to any other position in the Career Service."

[31] Another center which provides similar services to D.C. residents is located at 500 C Street, NW, the one-stop services center. William Vazquez, interview in Washington, D.C., Nov. 19, 1991.

nel. The D.C. Office of Personnel, through its four Servicing Personnel Offices, then distributes the vacancy announcements, reviews the applications for employment, and compiles a certificate of eligible candidates for each vacancy. These certificates are sent to the respective agencies for final selection. While responsibility for recruitment lies with the D.C. Office of Personnel, the scope and breadth of the activity is determined by the individual agencies that provide the recruitment funds.[32]

Prior Initiatives

The District government has instituted several initiatives over the years to address the Latino community's employment concerns. In 1976 the D.C. Council enacted legislation requiring every District agency that employs 500 or more employees to have a Spanish program coordinator on the agency's staff.[33] The purpose of the Spanish program coordinator was to ensure that the respective agency's resources were fully available to the Latino community.[34] These Spanish program coordinator positions have evolved into what are now referred to as Hispanic program managers under the Hispanic Employment Program. Regardless of their titles, these positions and the overall implementation of these programs (the Spanish program coordinator program and the Hispanic Employment Program) have not been effective.

At a minimum, both the level of reporting relationships and the frequency of program-related meetings have declined in recent years. For example, although the law requires the Director of the Office on Latino Affairs (OLA) to meet at least once a month with the Spanish program coordinators "to coordinate activities within the government involving the Latino community,"[35] in practice, until recently, the OLA director did not meet with the coordinators.[36] William Vazquez, the Hispanic program officer in the D.C. Office of Personnel, coordinated the meetings, but did not do so on a monthly basis.[37] Unlike the director of OLA, who until recently reported directly to the Mayor,[38] Mr. Vazquez, as the Hispanic program officer, does not report directly to the Mayor, nor does he have as broad a focus as the OLA director (as an employee of the Office of Personnel, Mr. Vazquez is concerned solely with employment-related issues).

Those appointed to the positions of agency coordinators are often employed in the lower grades with little contact with the agency heads. There are approximately 29 Hispanic program managers, only 1 of whom serves full time.[39] Mr. Vazquez testified that of those, "[w]e have probably five or six that have asserted themselves and taken on responsibility. We have others who have not been very effective simply because of their grade and their opportunity to actually deal with the question of the directors and this policy. . . . A number of them have been selected at Grades 7, 8. It's not probable that this individual would meet on a quarterly basis with the director of an agency, let's say."[40]

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[32] *Hearing Transcript*, vol. 3, pp. 41-46.

[33] D.C. Code Ann. § 1-2314 (1987).

[34] Under the statute, the Spanish program coordinators' job was to ensure that the statutory intent of the District Council in passing the legislation was carried out within their respective agencies: "It is the intent of the Council of the District of Columbia that the District government shall ensure that a full range of health, education, employment, and social services shall be available to the Latino community in the District of Columbia. The planning and monitoring of programs undertaken by the Office on Latino Affairs and the Commission in partnership with members of the Latino community, families, community leaders, private agencies, and the District of Columbia government shall serve as an impetus to making the Latino community an integral part of the District of Columbia community." D.C. Code Ann. § 1-2301 (1987).

[35] D.C. Code Ann. § 1-2313 (1987): "In order to carry out the purpose of this chapter, the Director shall: . . . (9) Meet with the Spanish Program Coordinators within each department and agency of the District of Columbia government having such offices as a group, at least once a month to coordinate activities within the government involving the Latino community."

[36] Vazquez Testimony, *Hearing Transcript*, vol. 3, pp. 54-55; Transcript of U.S. Commission on Civil Rights' Meeting, Nov. 13, 1992, pp 122-124.

[37] Vazquez Testimony, *Hearing Transcript*, vol. 3, p. 54. Mr. Vazquez testified that when he assumed the position of Hispanic program officer in 1987, the agency coordinators had not met in several years. Ibid., pp. 54-55.

[38] Mara Lopez, Acting Director, Office on Latino Affairs, testimony, *Hearing Transcript*, vol. 3, p. 246. In response to Ms. Lopez' testimony that she reports to the Secretary of the District of Columbia, Debra Delgado, Chair of the Commission on Latino Community Development, commented that: "[H]istorically, the Executive Director of the Office of Latino Affairs reported directly to the Mayor, so this is a recent shift in authority." Ibid., p. 247.

[39] Vazquez Interview, Nov. 19, 1991.

The Hispanic Employment Program (HEP), which Mr. Vazquez directs, was instituted in 1987. It consists of the program officer, four Hispanic staffing specialists, and Hispanic program managers in each of the agencies. Implementing guidelines for the Hispanic Employment Program are included in the District's Personnel Manual[41] and state that each agency is to submit annual reports to the D.C. Office of Personnel at the time the agency submits its budget to the D.C. City Council. The annual reports are to consist of a Hispanic Employment Program action plan and an accomplishment report. According to the guidelines, the agency action plans are to include an analysis of the agency work force and the agency's future recruitment methods. The agency accomplishment reports are to contain the following:

1. methods used to recruit and select qualified Hispanics;
2. a description of all activities implemented by the agency and how these activities met or failed to meet the HEP's goals and objectives;
3. statistics and other relevant data;
4. identification of problem areas; and
5. accomplishments and recommendations.[42]

In practice, the Hispanic program officer in the D.C. Office of Personnel does not receive such reports from the agencies, or any reports regarding recruitment, future plans, etc.[43]

In 1986, subsequent to the submission of the 1985 *Latino Community Agenda* report, the District government undertook the Mayor's Latino Initiative, a $1.2 million program administered by the Mayor's Office on Latino Affairs, which funded bilingual positions and programming in various government agencies. These positions differed from the Spanish program coordinators as these bilingual personnel were to be placed in positions where they would provide direct service to the public.[44] The funding of the Latino Initiative was cut by 50 percent in fiscal year 1992, to approximately $500,000. The agencies were expected to absorb the bilingual personnel whose positions would no longer be funded through the initiative.[45]

Bilingual Recruitment Efforts

The District government has done little to recruit bilingual personnel for public-contact positions that require communication with Spanish-speaking clientele. As discussed above, although the Office of Personnel is responsible for recruitment, it is dependent on the individual agencies to provide funding for this purpose. In general, past recruitment efforts in the District government have consisted of sending job vacancy announcements to 21 community-based organizations in the District of Columbia; publicizing the vacancies through the Office on Latino Affairs' newsletter, the OLAGRAM; distributing job vacancy announcements to the local Hispanic media in hopes that the newspapers will publicize the positions for free as a public service (the funding for paid advertisements has been very limited in the past 2 years); the efforts of the Latino Employment Services Center, the Hispanic program officer, two Hispanic staffing specialists, and the 29 agency Hispanic program managers,[46] as well as job fairs. Most of the intensive specialized recruitment in the past has been for the police, fire, and corrections areas.[47]

At the present time, for most District government vacancies, funds are seldom available to advertise in the local Spanish-language newspapers, and seldom are efforts made outside of the District to recruit bilingual personnel. The Hispanic program officer in the D.C. Office of Personnel asserted that the Hispanic Employment Program should be given sufficient funds to advertise and recruit, an opportunity the program has never had.[48] According to Mr. Vazquez, "if given the opportunity to announce, to do outreach and to work with clients, we can generate quite a sufficient pool of qualified applicants who are of Hispanic origin to compete for these positions, no doubt about it."[49]

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[40] Vazquez Testimony, *Hearing Transcript*, vol. 3, p. 56.

[41] District Personnel Manual Transmittal Sheet Number 4 (Nov. 26, 1987) transmitting "Part II, Implementing Guidance and Procedures, Chapter 8, Career Service, Subpart 20, Hispanic Employment Program."

[42] District Personnel Manual, Part II, Implementing Guidance and Procedures, Chapter 8, Career Service, Subpart 20, Hispanic Employment Program § 20.6.

[43] Vazquez Interview, Nov. 19, 1991.

[44] Mara Lopez, Acting Director, Office on Latino Affairs, interview in Wash., D.C., Oct. 23, 1991.

[45] Ibid.

With respect to the Department of Human Services, Sara Cruz, a personnel staffing specialist for 7 years in Servicing Personnel Office #1, and president of the D.C. Hispanic Employees Association, testified that the Department had undertaken a trip to Puerto Rico a year ago to recruit social workers, but that "the Department of Human Services has never undertaken a real effort or put funding forth to recruit bilingual personnel."[50]

At the time of the Commission hearing, the District indicated that it had "just entered into an agreement with the Child Welfare League of America to enlist their assistance with recruitment."[51] Commissioner Patterson explained: "[T]hey in particular are going to be helping us to recruit social workers from some of the major metropolitan areas in North Philadelphia, New York and Boston. We think that that will also widen the pool of candidates in general for us. And, we think, also potential candidates with Hispanic background."[52] (The Child and Family Services Division has a 55 percent vacancy rate for social workers, with 93 vacancies,[53] and it is under a court order to fill the vacancies.) Of the last 22 social workers who made the selection certificate, 2 were Spanish speaking.[54]

In order to attract and retain bilingual personnel, other jurisdictions, such as Illinois[55] and Ohio,[56] have enacted legislation that authorizes a pay supplement for employees whose positions require bilingual capabilities.

Affirmative Action

In 1976 the Council of the District of Columbia passed legislation[57] that sets forth affirmative action goals for the District government. The law is codified in Sections 1-507 through 1-514 of the D.C. Code. Section 1-507 sets forth the affirmative action goals as follows:

> The goal of affirmative action in employment throughout the District government is, and must continue to be, full representation, in jobs at all salary and wage levels and scales, in accordance with the representation of all groups in the available work force of the District of Columbia, including, but not limited to, Blacks, Whites, Spanish-speaking Americans, Native Americans, Asian Americans, females, and males. . . . "[A]vailable work force" means the total population of the District of Columbia between the ages of 18 and 65.[58]

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[46] William Vazquez, interview in Washington, D.C., Nov. 19, 1991.

[47] Green Testimony, *Hearing Transcript*, vol. 3, p. 43.

[48] William Vazquez, interview in Washington, D.C., Nov. 19, 1991.

[49] Vazquez Testimony, *Hearing Transcript*, vol. 3, p. 51.

[50] Sara Cruz, Personnel Staffing Specialist, Servicing Personnel Office #1, D.C. Office of Personnel, testimony, *Hearing Transcript*, vol. 3, pp. 46-47.

[51] Dr. Raymond Patterson, Commissioner of Mental Health, testimony, *Hearing Transcript*, vol. 1, p. 301.

[52] Ibid.

[53] Vincent Grey, Director, D.C. Department of Human Services, testimony, *Hearing Transcript*, vol. 1, p. 335.

[54] Dr. Reginald Wells, Acting Commissioner of Social Services, testimony, *Hearing Transcript*, vol. 1, p. 334.

[55] Ill. Ann. Stat. ch. 127, § 63b108a.2 (Smith-Hurd Supp. 1992).

[56] Ohio Rev. Code Ann. § 124.18.1(H) (Anderson 1990).

[57] Affirmative Action in District Government Employment Act, D.C. Law 1-63, 22 DCR 6538 (codified at D.C. Code Ann. §1-507 (1987)).

[58] D.C. Code Ann. § 1-507 (1987).

The 1976 statute requires each agency to submit affirmative action plans annually to the Council and Mayor.[59] The statute requires:

> (a) Each plan shall state the number of females and males who are Black, White, Spanish-speaking, Native American and Asian American, who would, by using the goal of their representation in the available work force in the District, be employed by the agency at the actual employment levels in the agency at the time the plan is submitted. Such numbers shall be broken down:
>
> (1) Agency wide;
> (2) Within each office in the agency; and
> (3) Within each pay level of each salary scale in the agency.
>
> (b) These shall be the goals, not the quotas, of the plan. The plan shall also state the actual employment levels in the agency, broken down in the same way as the goals, and the difference between the actual employment and the goals.[60]

Agency actions to secure equal employment opportunities for protected groups are also to be included in the agencies' affirmative action plans.[61] The law also makes the D.C. Office of Human Rights responsible for "equal employment opportunity cases instituted against the District government or any of its agencies."[62]

In 1985 the city administrator approved the issuance of Mayor's Memorandum 85-47, which was addressed to the heads of all of the District's departments and agencies.[63] The memorandum instructed agencies to submit an initial 5-year affirmative action plan, followed by annual updates. The plans were to be submitted to the Office of Human Rights for review and approval, and the Office of Human Rights would then "report to the Mayor and City Council on accomplishments of each agency."[64] In her testimony before the Commission, Margie Utley, Director of the D.C. Department of Human Rights and Minority Business Development, testified that none of the agencies has current affirmative action plans. According to Ms. Utley, some of the agencies had prepared 5-year affirmative action plans in the past, but none of them had prepared annual updates.[65] Ms. Utley testifed: "Quite frankly, during that 5-year period, there was no enforcement effort pretty much. That, as you know, predates my coming, so [I] can't speak to it more definitively than that. The information that was given to me by persons who were there is that it was not done. There was no monitoring of those plans."[66] Sara Cruz, president of the D.C. Hispanic Employees Association, asserted that "the lack of affirmative action plans in the agencies under the jurisdiction of the Mayor, as well as the independent agencies, has been detrimental to the recruitment of Hispanics and to equal opportunities in the workplace. This situation is not something new."[67]

Confusion within the Department of Human Rights is evident. At the time of the Commission hearing on January 31, 1992, Director Utley testified that the Department of Human Rights had not been able to locate inhouse *any* of the affirmative action plans submitted by agencies in the past.[68] However, within a month's time, an attorney from the Washington Lawyers' Committee for Civil Rights Under

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[59] *Id.* § 1-508. The plans are to be submitted each year at the time the agency submits its budget to the Council.

[60] *Id.* § 1-509.

[61] *Id.* § 1-511.

[62] *Id.* § 1-514.

[63] Maudine R. Cooper, Director, Office of Human Rights, Mayor's Memorandum 85-47 to Heads of Departments and Agencies, Sept. 16, 1985.

[64] Ibid., p. 3.

[65] Margie Utley, Director, D.C. Department of Human Rights and Minority Business Development, testimony, *Hearing Transcript*, vol. 3, p. 59.

[66] Ibid., p. 59.

[67] Sara Cruz, President, D.C. Hispanic Employees Association, testimony, *Hearing Transcript*, vol. 3, p. 7.

[68] Utley Testimony, *Hearing Transcript*, vol. 3, p. 59.

Law reviewed over 40 prior affirmative action plans in the Department of Human Rights as a result of a Freedom of Information Act (FOIA) request. In addition, the attorney was able to determine that contrary to the director's testimony that no agencies submitted updates of their prior 5-year affirmative action plans, approximately 17 of the agencies had submitted updates in 1987.[69]

According to Director Utley, the 1985 Mayor's order was issued for a 5-year term and has since expired.[70] In the fall of 1991, the Department of Human Rights drafted a new proposal for a Mayor's order, but it still remains within the Department.[71] Ms. Utley testified that there were difficulties connected with the proposal, specifically, case law that raises questions as to whether the provisions in the D.C. Code can be enforced as currently written since the law requires representation proportional to the District's population.[72]

During the Commission hearing, Deputy Corporation Counsel Vanessa Ruiz explained that the prior case law must be taken into consideration in the drafting of the new mayoral order on affirmative action:

> [T]he Fire Department over 10 years ago adopted an affirmative action plan and then they were sued. The affirmative action plan was struck down by the U.S. Court of Appeals for the District of Columbia as being in violation of Title VII, Federal law, and of the Constitution because it sought to implement D.C. Law 1-63 which was looking for proportional representation in District employment with reference to the general work force. Therefore, we must be very careful, given that our law . . . is under a cloud as to its constitutionality and compliance with Title VII as to what kinds of affirmative action plans we can actually put in place and enforce. Because if not, we open ourselves up to lawsuits for reverse discrimination as we have in fact been subject to in the past.[73]

Nevertheless, resolution of this matter through the development of a legally sound affirmative action program by the District of Columbia has yet to be accomplished.[74]

Discrimination Against Hispanics in the Private Sector

Opportunities for employment in the District government are especially important to the District's Latino community because of discrimination in private sector employment. A recent study conducted by the Fair Employment Council of Greater Washington, Inc., revealed that Latinos are discriminated against more than 22 percent of the time by private employers when seeking employment through telephonic response to job advertisements. The council found that the discrimination "was particularly prevalent for males and for jobs located in the center city, not requiring a college degree, and not widely advertised."[75] The study cited the following examples of treatment that the study's testers experienced during the course of the study:

> A vacancy for a receptionist in an optometrist's office in suburban Virginia was advertised in a suburban newspaper. When a Latino tester called the next day to apply, she was put on hold, and then called by the wrong name (Carmen, when she had given her name as Juanita) and told

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[69] Juan Milanes, Esq., memorandum to Rod Boggs and Joe Sellers, Washington Lawyers' Committee for Civil Rights Under Law, Feb. 25, 1992. Mr. Milanes also substantiated that some agencies have never submitted any affirmative action plans. Ibid.

[70] Utley Testimony, *Hearing Transcript*, vol. 3, p. 60.

[71] Ibid.

[72] Ibid., p. 65. *See* Hammon v. Barry, 813 F.2d 412 (D.C. Cir.), *reh'g denied*, 826 F.2d 73 (D.C. Cir.), *reh'g granted, in part, en banc*, 833 F.2d 367 (D.C. Cir. 1987), *vacated, en banc*, 841 F.2d 426, *cert. denied*, 486 U.S. 1036 (1988), *later proceeding* 752 F. Supp. 1087 (D.D.C. 1990) (a case challenging the constitutionality of an affirmative action plan adopted by the D.C. Fire Department). *See also* Dougherty v. Barry, 607 F. Supp. 1271 (D.D.C. 1985), *vacated, in part*, 869 F.2d 605 (D.C. Cir. 1989).

[73] Vanessa Ruiz, Deputy Corporation Counsel, testimony, *Hearing Transcript*, vol. 3, pp. 80-81.

[74] In developing their affirmative action program, the District of Columbia should address the statute's reference to affirmative action for "Spanish-speaking Americans," rather than Hispanics.

[75] Marc Bendick, Jr., Charles W. Jackson, Victor A. Reinoso, and Laura E. Hodges, *Discrimination Against Latino Job Applicants: A Controlled Experiment* (Fair Employment Council of Greater Washington, 1992), p. 1.

> that they were not taking any further applications. When the Anglo tester called thirteen minutes later, she was given an appointment for an interview the following morning.[76]

> A Sunday *Washington Post* carried an advertisement for a manager for a specialty store in a suburban shopping mall. On Monday morning, both testers called a toll-free number to leave a telephone number where an interviewer could contact them. In her call, the Latino was asked nothing about her experience and was never called back. In her call 15 minutes later, the Anglo was asked about her sales experience and was called back within half an hour.[77]

> [O]ne test involved a vacancy advertised in the Sunday *Washington Post* for an assistant manager of a suburban health club. When a Latino tester called on the following Tuesday, the call lasted one minute, and he was instructed to mail in his resume. When the Anglo tester called 4 minutes later, the call lasted two minutes. He was told that an open house would be held the following day, that he should bring in his resume at that time, and that he would then be interviewed.[78]

The barriers faced by Latinos are particularly problematic in light of the size of their presence in the United States. The Fair Employment Council reports that "[w]ithin the next 25 years, Latinos are expected to replace African-Americans as the nation's largest minority group. In the ten largest American cities today, an average of more than one person in four is of Spanish origin."[79] The report went on to state that "[d]uring the 1990s, Latinos are forecast to account for 27 percent of labor force growth nationwide, reflecting both a high birth rate and international immigration."[80]

Job Training and Employment-Related Programs

While the D.C. Office of Personnel is responsible for employment within the District government, the D.C. Department of Employment Services (DOES) is responsible for job training. Many programs require that participants be U.S. citizens or have a green card. These include the Job Training Partnership Act program (JTPA), Youth Employment Act Training and Retraining for Employment Program (TREP), On-the-Job-Training program, Job Corps, Single Mothers Are Resources Too program (SMART), JOBS/ARC program, Summer Youth Employment Program, Youth Employment Act In-School Program, Youth Employment Act Out-Of-School Program, and Senior Community Services Employment Program (SCSEP). The Title IV-C Veterans Program requires participants to be U.S. citizens.

Although the Hispanic participation rate for some of the employment training programs was good, there are still a number of programs, such as the Single Mothers Are Resources Too program, Summer Youth Employment Program, the Youth Employment Act In-School Program, the On-the-Job-Training Program, the Job Corps, and the Youth Leadership and Development Institute, in which the rate of Hispanic participation is low and affirmative efforts are needed to increase these rates (see table 6.1).

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[76] Ibid., p. 10.

[77] Ibid.

[78] Ibid., p. 9.

[79] Ibid., p. 3.

[80] Ibid., p. 3, (citing DeFreitas, G. (1991). Inequality at work, Hispanics in the U.S. labor force. New York: Oxford University Press).

TABLE 6.1
Latino Participation in Department of Employment Services Employment and Training Programs for 1991

Title	Total number of participants	Hispanic Participants Number	%
Job Training Partnership Act (JTPA)	2,202	208	9.5%
Youth Employment Act/Training and Retraining for Employment Program	903	90	10.0%
On-the-Job Training	483	13	3.0%
Job Corps	479	16	3.3%
Single Mothers Are Resources Too (SMART)	66	0	
JOBS/ARC Program	2,214	Not available	
Apprenticeship Program (Metropolitan Area)	586	49	8.4%
Pre-Apprenticeship Program	5	0	
Summer Youth Employment Program	7,560	261	3.5%
Youth Employment Act In-School Program	1,864	89	4.8%
Youth Employment Act Out-of-School Program	273	26	9.5%
Youth Leadership and Development Institute	248	5	2.0%
Juvenile Diversion Program	100	Not available	
Senior Community Services Employment Program(SCSEP)	241	17	7.1%
Special Temporary Employment Program (STEP)	441	1	0.2%
Disabled Veterans Outreach Program (DVOP)/Local Veterans Employment Representative (LVER)	1,441	Not available	
Title IV-C Veterans Program	12	Not available	
Regional Employment Program	854	Not available	
Targeted Jobs Tax Credit	877	Not available	

Chapter 7. Latino Access to Social Services

The delivery of social services by the D.C. Department of Human Services (DHS) has been an area of major concern to members of the District's Latino community. During a Council of the District of Columbia roundtable in February 1991, Debra Delgado testified that, during her term of office as chairperson of the Commission on Latino Community Development, almost every problem brought to the attention of her commission had been related to the Department of Human Services.[1] As is the case with many problems discussed in this report, the Latino community's concerns are not new. Many had been formally brought to the attention of the D.C. government as early as 1985 through the *Latino Community Agenda* report.[2] For a community that has been identified as the poorest in the city,[3] the least likely to have health insurance,[4] and the most likely to live in doubled-up housing,[5] access to social services to which they are entitled is a matter of urgency. But without adequate bilingual personnel, bilingual signage, and bilingual materials, the provision of these social services to the Latino community may never be fully realized.

Access to Public Benefits

The Income Maintenance Administration (IMA), a subdivision of the Department of Human Services, is responsible for administering public assistance, including medicaid, medical charities, aid to families with dependent children (AFDC), food stamps, general public assistance, emergency assistance, and burial assistance. One out of every four District residents (140,000 people) receives some form of assistance from the IMA,[6] and the numbers served are increasing, just as they are increasing nationally. By January 1992, the District was experiencing a net increase of approximately 248 AFDC cases per month, which constituted a 15 percent increase over the prior year.[7] The number of Food Stamp recipients increased by 20 percent over 1991.[8] In light of the heavy workload, all District applicants must be extra diligent in trying to understand the bureaucratic requirements accompanying these benefits and in providing the documentation required. In addition, there are problems associated with some of the programs that affect all residents of the District, such as delays in receiving food stamps.[9] But the District's Latino population faces additional hurdles in obtaining even the most essential health and subsistence benefits.

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[1] Debra Delgado, Chairperson of the Commission on Latino Community Development, written testimony, *Joint Public Roundtable of the Comm. on Human Services and the Comm. on Public Services on Provision of Services to the Hispanic Community by the Department of Human Services*, Council of the District of Columbia, Feb. 14, 1991, p. 3 (hereafter *Joint Public Roundtable*). Ms. Delgado went on to explain that it was difficult for her to choose which problems to highlight during her testimony: "I was not sure if I should talk about the number of emergency medicaid applications back-logged in the Income Maintenance unit for periods of 6 months and longer. Or should I talk about my days as a direct service provider when I encountered an overwhelming number of Spanish-speaking clients facing health problems that could have been avoided had they had access to public health facilities. Or perhaps I could focus on the very tenuous bilingual capabilities of the Department [of Human Services], doubtful because several of the employees now providing bilingual services are term employees whose appointments are likely not to be renewed in order to comply with mandated budget cuts." Ibid.

[2] The Ad Hoc Coalition for a Latino Community Agenda, D'Emilio Associates, and Nena Terrell, *Latino Community Agenda* (1985), (hereafter *Latino Community Agenda*).

[3] District of Columbia Government, Office of the Special Assistant for Human Resource Development, Office of the Mayor, *Who's Poor in the District of Columbia?* (1988).

[4] District of Columbia Government, Office of the Special Assistant for Human Resource Development, Office of the Mayor, *Residents Without Health Insurance: Who's at Risk?* (1989).

[5] District of Columbia Government, Office of the Special Assistant for Human Resource Development, Office of the Mayor, *Doubled-Up Households in the District of Columbia* (1989).

[6] James Butts, Administrator, Income Maintenance Administration, D.C. Department of Human Services, testimony, *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, 1992, vol. 1, p. 308 (hereafter *Hearing Transcript*). The per capita medicaid payment for the District of Columbia is $357.28 (for the U.S. in general it is $161.94), the per capita AFDC payment for the District is $84.63 (for the U.S. in general it is $48.54), and the per capita food stamps payment for the District is $68.91 (for the U.S. in general it is $55.49). U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, *Federal Expenditures by State for Fiscal Year 1990*, pp. 27-30.

[7] Ibid., pp. 308-09.

In order to apply for benefits, residents of Wards 1, 2, and 3, located in Northwest D.C., must go to the Income Maintenance Administration center at 645 H Street, NE, which as the address indicates, is in the northeast section of the city.[10] It often takes several trips to the IMA center before eligibility for these benefits is determined. For this reason, the public transportation costs, plus the complexities of rail and/or bus transfers between the two quadrants, can pose a barrier to an economically disadvantaged resident. For mothers accompanied by preschool age children, the trips to the center can be especially inconvenient.

Until 1989, there was an IMA center in Ward 1, in the Adams Morgan community on Adams Mill Road. Although not a full service center, the center did have bilingual staff who provided basic information and it was used frequently by the community. (In one 7-month time period, the center served 1,600 Latino clients).[11] A full-service IMA center has not been established, despite repeated requests from the Latino community.[12] According to William Norbeck, a supervisor for 6 years of the Multinational Unit (a unit established to assist language-minority clients at the 645 H Street, NE, center), there was clearly a need for a service center in the Mount Pleasant community,[13] based upon the Multinational Unit's caseload in comparison to other IMA units.[14] Although the IMA did not provide the Commission with any statistics or other evidence to refute the Latino community's assertions, its administrator testified before the Commission that the caseload did not warrant a separate center.[15] He also told Commission staff that a search for a possible site 4 to 5 years earlier had produced no suitable locations that were accessible to persons with disabilities.[16] There are currently 11 IMA centers in the city: 4 in southeast Washington, 5 in northeast Washington, and 2 in northwest Washington (one of which only administers general public assistance benefits, while the other primarily serves Ward 4). At the Commission's hearing, Vincent Grey, director of the Department of Human Services, testified that the Department was considering establishing a partial-service center near the Adams Morgan community;[17] however, such a center has yet to be established.

The trek to 645 H Street, NE, can be particularly exasperating if it is in vain. Milagros Casiano, director of the Bilingual Health Access Project (which assists Latino applicants in obtaining public benefits), testified to one such example:

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[8] Butts, testimony, *Hearing Transcript*, vol. 1, p. 309.

[9] *See* Christine Spolar, "Food Stamp Recipients Left Waiting in D.C.," *Washington Post*, Mar. 19, 1992, p. B5; Christine Spolar, "Food-Stamp Families Getting Free Groceries," *Washington Post*, Mar. 24, 1992, p. D1; *Franklin v. Barry*, No. 90-3124 (D.D.C., filed 1990).

[10] Some Ward 1 residents receive food stamps through the 508 Kennedy Street center.

[11] *Latino Community Agenda*, p. 39.

[12] *See Latino Community Agenda*, p. 39; D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action*, Final Recommendations to the District of Columbia Government (1991), p. 64.

[13] William Norbeck, interview in Washington, D.C., Dec. 5, 1991, (hereafter Norbeck Interview); William Norbeck, testimony, *Hearing Transcript*, vol. 1, p. 214.

[14] Norbeck Interview, Dec. 5, 1991.

[15] Butts Testimony, *Hearing Transcript*, vol. 1, p. 314.

[16] James Butts, interview in Washington, D.C., Dec. 9, 1991 (hereafter Butts Interview).

[17] Vincent Grey, Director, Department of Human Services, testimony, *Hearing Transcript*, vol. 1, pp. 314-15. Mr. Grey indicated that he envisioned its being a one-stop center which would provide some IMA services, as well as other social services, but would not be a full-service IMA center. Ibid.

> Ms. Casiano: . . . Tuesday I went with 16 clients over there [645 H Street, NE], and I asked them to sit. I registered them, and they were registered since 9:00 o'clock. At 11:00 o'clock, I was informed that the social workers were going to the Redskin party and that I should go home because they would not take care of my clients.
>
> And I said, "Well, they're registered and you have posted a sign there that if you're registered in the morning you have the right to be seen, so I'm going to stay here and see how many people you're going to help today."
>
> Commissioner: Did they see anybody that day?
>
> Ms. Casiano: They saw four of them.[18]

Sister Maureen Foltz, a social worker with Columbia Road Health Services, which also serves a large Latino clientele, offered another example:

> I accompanied an elderly Salvadoran woman to 645 H Street to begin a process for medicaid. She had an appointment and she had a name.
>
> So, we went to the desk of the woman that was . . . the receptionist at that time and asked her to call this worker. And she got on the phone and dialed the number and told us to please sit down and that she would let us know when the worker came downstairs. So, we sat down.
>
> This was 8:30 in the morning. At about a quarter to 10, I got back up and went back to the desk and asked her if she could please call again. And she said, "Yes, okay. Oh, sure. Sit down now. You know, as soon as the worker comes out." And I saw her pick up the phone and dial.
>
> As it got close to lunch time, I knew that I was going to be there for the long haul if we didn't do something. So, I went back and asked her again to please call. And she smiled and agreed and started to dial.
>
> And, at that time, one of the Hispanic workers came through the reception area, so we approached him and asked him about this particular worker and if he could perhaps send her so that we could meet with her.
>
> And he said, "She's on vacation until next week."
>
> So, I went back to the receptionist and I said, "Would it be possible for you to call this worker so that I could talk to her and just tell her what I'm here for?"
>
> "Oh, sure." She dials the number. "She's not at her desk right now. Maybe, she's at lunch. Would you like to wait?" And I said, "Well, then maybe I could talk to her supervisor." Got somebody on the phone. I'm not sure if it was her supervisor or not, asked for the woman again by name and was told that the woman was on vacation.
>
> I hung up the phone and I said to the receptionist, "I can't imagine who it was that you were talking to because the woman that we're waiting for is gone until next week, on vacation."
>
> And her response was, "Well, you know, they don't speak English very well, some of them, and I think that maybe things get confused."
>
> There was no sense of responsibility for the fact that I could have sat there until 5 o'clock and never accomplished anything.
>
> And I know from past experiences and experiences since that, really, there was a certain tone of respect for me as a caseworker with this particular receptionist. If I had been an Hispanic woman, that altercation would have been much more serious, and probably more insulting.[19]

As these examples suggest, after a low-income resident from northwest D.C. manages to get to the 645 H Street center, there are additional barriers to be overcome, particularly if the resident does not speak fluent English. The Income Maintenance Administration has a serious shortage of bilingual personnel. Since this Commission's hearing in January 1992, the number of bilingual Spanish-speaking employees in the IMA has increased from 16 to 24,[20] out of a total of 775 employees.[21] (The entire Department of Human Services has only 109 Hispanic employees out of a work force of 8,266.)[22] Not all of the bilingual employees are employed at the 645 H Street, NE, center (as of January 1992, eight of the employees were employed at centers elsewhere).[23] In light of the fact that the vast majority of the District's Latino population is serviced at the 645 H Street, NE, center, the complaints from the Latino community about the lack of bilingual personnel are justified.

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[18] Milagros Casiano, Bilingual Health Access Project, testimony, *Hearing Transcript*, vol. 2, pp. 556-57.

[19] Sister Maureen Foltz, Social Worker, Columbia Road Health Services, testimony, *Hearing Transcript*, vol. 1, pp. 216-18.

[20] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992.

[21] Butts Interview, Dec. 9, 1991.

[22] Vanessa Ruiz, Deputy Corporation Counsel, Government of the District of Columbia, memorandum to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights Jan. 24, 1992 (Attachment 2A).

[23] List of Spanish Speaking Bilingual Employees of the Income Maintenance Administration, Jan. 27, 1992.

There are currently no bilingual employees in the food stamps program or in the emergency assistance program.[24] The bilingual personnel who are employed are not assigned strictly to language-minority clients, and they are not all available to meet with the public every day.[25] The IMA's Multinational Unit, which services language-minority clients, was restructured because it did not have the capability to handle the caseload.[26] Spanish-speaking clients will often be assigned to English-speaking caseworkers. William Norbeck, who assists patients of several hospitals in obtaining assistance, including medical benefits, testified that 75 percent of his clients are Latino, and that 50 percent of the time they are assigned to a non-Spanish-speaking caseworker.[27]

The Income Maintenance Administration and the Office on Latino Affairs jointly fund the Bilingual Health Access Project, which employs a full-time staffer who assists applicants complete applications for public benefits. Most of these individuals are of Latino origin. The project is located in the Adams Morgan community and serves an average of 300 applicants a month.[28] In some months, it has served as many as 350 applicants.[29] Even when the Bilingual Health Access Project has helped a Spanish-speaking applicant to complete the application and compile all necessary supporting documentation, applicants often return with applications in hand, saying that the IMA worker has told them they must bring someone with them who speaks Spanish.[30] It is often difficult for Spanish-speaking applicants to bring along a relative or friend to translate because many work during the day when the IMA has office hours. The Spanish Catholic Center also received numerous complaints about the lack of bilingual staff, including clients complaining that "workers spoke loudly and emphatically to them—in English[.] [A]lthough the Latinos still did not understand the words, they felt rejected."[31]

The District government responds that pursuant to IMA policy, "no applicant for assistance is *required* to bring an English speaking translator to assist with the application process."[32] It stated that while "a non-English speaking applicant may sometimes wait longer to be interviewed than an English speaking applicant . . . no one is turned away or told that they cannot be seen, without translation assistance from a third person. IMA is aware of the problems posed by a lack of sufficient bilingual staff and has been in the process of recruiting additional bilingual staff to assist in being responsive to the Hispanic community."[33]

In addition to the need for more Spanish-speaking caseworkers, the Latino community has repeatedly asserted the need for a Spanish-speaking receptionist at the 645 H Street, NE, center.[34] These receptionists are the initial contacts until meeting with a caseworker. During testimony before the Commission, one social worker assessed the situation as follows:

> In a visit there [645 H Street, NE] this week, there was no Spanish literature about DHS services in the waiting room.

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[24] Butts Interview, Dec. 9, 1991.

[25] Milagros Casiano, Bilingual Health Access Project, interview in Washington, D.C., Nov. 27, 1991 (hereafter Casiano Interview).

[26] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992.

[27] William Norbeck, testimony, *Hearing Transcript*, vol. 1, pp. 209-10.

[28] Casiano Testimony, *Hearing Transcript*, vol. 2, p. 551.

[29] Casiano Interview, Nov. 27, 1991.

[30] Casiano Interview, Nov. 27, 1991. *See also* Anna Rosario, Chairperson, Multicultural Health Rights Advocates Task Force, testimony, *Hearing Transcript*, vol. 1, p. 202.

[31] Written statement of Sister Betty Ann McNeil, ACSW, Spanish Catholic Center (Feb. 7, 1992) (hereafter *McNeil Written Statement*).

[32] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992 (emphasis in original).

[33] Ibid.

[34] *See* Multicultural Health Rights Advocates Task Force, written testimony, *Joint Public Roundtable*, p. 3; Rosario Testimony, *Hearing Transcript*, vol. 1, pp. 205-06.

> There were no signs posted in Spanish, nor was anyone visible to direct non-English speakers to the waiting area or to answer questions. More than half of the clients waiting appeared to be Hispanic. An intake worker sits directly under a sign saying, "Se Hablo Espanol," yet all front line staff only speak English.[35]

One community representative, a former IMA employee, estimated that the Latino community had been requesting for at least 10 years that the IMA hire a bilingual receptionist.[36] James Butts, IMA administrator for the past 9 years, testified, however, that the need for a bilingual receptionist was first brought to his attention in the fall of 1990[37] and that he supported the suggestion.[38] Nevertheless, a bilingual receptionist had not been hired at the time of the hearing. In October 1992, the District government advised that despite its efforts to hire a bilingual receptionist, it had still not been able to fill the position, and bilingual staff with other responsibilities were still being called upon to assist the receptionists and to cover the desk during critical hours of the day.[39]

Despite repeated complaints about the IMA's servicing of the Latino population, dating back to the formal submission of the Latino *Agenda* in 1985, it appears that the agency has done little to assess or respond to the needs of the District's Latino population. Although the director restructured the Multinational Unit because it could not keep up with the caseload of language minority clients, Mr. Butts could not provide the Commission with the number of Latino clients served, citing the antiquation of the IMA's computer system.[40] Moreover, the need for a bilingual receptionist and bilingual signage and materials should have been obvious and small steps that could have been taken without any great expense.[41]

Telephonic and written communication with the IMA for language-minority clients is also problematic. Reporting forms, checklists, and notices requesting additional documentation, as well as denial or termination of benefits, are sent to Spanish-speaking applicants and recipients in English. Some of the notices, specifically the Food Stamp and AFDC notices, do have a message in Spanish advising that if the recipient cannot read the letter he or she should call the Income Maintenance Administration. But, as April Land, a staff attorney with Neighborhood Legal Services Program, testified before the Commission, this system is ineffective:

> Not only are there not caseworkers that speak Spanish, but all of the notices, all of the forms, all of the tape-recorded messages at the Department of Human Services are in English, so that, for example, yesterday, people came in [to her office] with their monthly reporting forms for the AFDC.
>
> In order to receive their monthly check, they have to fill out the monthly report form. Well, the form is in English. And I have people coming to me to fill out these monthly report forms.
>
> Now, it does say about halfway down through the first paragraph of the form in Spanish, "If you don't understand this form, call your caseworker."
>
> Well, yesterday, I did a little experiment. And while there's no number on that particular form, I do have the numbers of caseworkers for my clients.
>
> And I called the Department of Human Services and I said in Spanish, "I'd like to speak to my caseworker because I can't fill out my monthly report form." And I was told that I had the wrong number.
>
> And then I said, "Is this the Department of Human Services?" And the person on the phone said, "Yes." I had said that in English—"Is this the Department of Human Services?"
>
> Then, I changed back to Spanish and I said, "I've received

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[35] Sister Betty Ann McNeil, ACSW, Spanish Catholic Center, testimony, *Hearing Transcript*, vol. 1, p. 561.

[36] Rosario Testimony, *Hearing Transcript*, vol. 1, p. 227.

[37] Butts Testimony, *Hearing Transcript*, vol. 1, p. 312.

[38] Butts Interview, Dec. 9, 1991.

[39] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992.

[40] James D. Butts, Administrator, Income Maintenance Administration, memorandum to Vanessa Ruiz, Assistant Corporation Counsel, (undated).

[41] Norbeck Testimony, *Hearing Transcript*, vol. 1, p. 210; Anna Rosario, Chairperson, Multicultural Health Rights Advocates Task Force, interview in Washington, D.C., Nov. 15, 1991.

> my monthly report form and I need assistance filling out my form." And what I got was, "I don't understand a thing you're saying, lady." Click.
>
> So—and that's just yesterday. . . . [T]hese are the kinds of problems that we're seeing every day.
>
> People in dire need of medical care. People with children who can't speak. People with children who need medical care. And they have no access to medical care.[42]

Given the ineffectiveness of this system of calling the IMA for assistance in interpreting the agency's correspondence, the IMA should send out bilingual notices and forms. The D.C. Code specifically requires the Mayor to "make available to persons whose primary language of communication is Spanish a Spanish text version of any District of Columbia government published application, informational brochure or pamphlet which is essential to the obtaining of services relating to the health, safety and welfare of Latino residents of the District of Columbia."[43] Although the IMA reports that application forms are now available in Spanish,[44] the IMA's failure to provide bilingual monthly reporting forms[45] appears to violate this statute.

Sister Betty Ann McNeil, a social worker with the Spanish Catholic Center, reported a similar experience that had come to her attention:

> When a Latina telephoned there this morning, she was answered by Voice Mail in *English*, followed by a worker who stated: "Baby, you have to speak English!" After repeated attempts at communication, a Spanish-speaker was located who explained to the caller that all DHS forms were in English (even though it was the Multi-National Medicaid Intake Unit). DHS staff further stated that there was no one at DHS to help Spanish speakers fill out the form. When the caller inquired where she could go for assistance in filling out the English medicaid form, the DHS staff responded that he thought there were some community agencies who could help, but he didn't know where to refer the caller.[46]

Additional allegations brought to the attention of the Commission, but which may or may not be unique to the Latino community, involve applicants receiving acceptance notices and rejection notices in the same envelope (one attorney could cite two instances of this happening among her clientele);[47] requests for excessive documentation, as well as requests for new documentation upon each visit back to the caseworker;[48] and general rudeness on the part of IMA workers.[49]

Even when a Hispanic applicant wants to contest a decision of the IMA, the applicant faces barriers, as it is uniformly asserted that the fair hearing procedure,[50] and all information pertaining to it,[51] are only available in English.

Out of concern for these problems, a processing backlog of up to 9 months for Hispanic medicaid applications,[52] and a 900 case backlog, representatives of many community-based organizations formed the Multicultural Health Rights Advocates Task Force in October 1990. The purpose of the task force is to advocate on behalf of minority-language medicaid applicants. Despite its efforts, the task force chairperson testified at the Commission hearing in January 1992 that medicaid applications by Hispanics were still taking up to 9 months and that from the task force's perspective, the situation at the IMA had not improved, but rather was worse.[53] One social worker who primarily serves Latinos, estimated that 75 percent of her caseload for public benefits never goes through due to administrative barriers,[54] and the Task Force chairperson estimated that 80 percent of her clients, who are primarily of Latino origin, incur administrative problems in accessing public benefits.[55]

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[42] April Land, Staff Attorney, Neighborhood Legal Services Program, testimony, *Hearing Transcript*, vol. 1, pp. 225-26.

[43] D.C. Code Ann. § 1-2342 (1987).

[44] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992.

[45] Informational materials on the programs have been translated into Spanish; however, the Commission received testimony that they are not readily accessible in the waiting room. McNeil Testimony, *Mount Pleasant Hearing*, vol. 2, p. 561.

[46] McNeil Written Statement, p. 3.

[47] April Land, Staff Attorney, Neighborhood Legal Services Program, interview in Washington, D.C., Dec. 27, 1991 (hereafter Land Interview).

[48] Rosario Testimony, *Hearing Transcript*, vol. 1, p. 207; Rosario Interview, Nov. 15, 1991; Land Interview, Dec. 27, 1991.

[49] Foltz Testimony, *Hearing Transcript*, vol. 1, pp. 231-232; Land Interview, Dec. 27, 1991.

[50] Norbeck Interview, Dec. 5, 1991; Land Interview, Dec. 27, 1992; Casiano Interview, Nov. 27, 1991.

[51] Rosario Testimony, *Hearing Transcript*, vol. 1, p. 208.

[52] By Federal law, medicaid applications must be processed within 45 days, or in the case of disabled applicants, 90 days. 42 CFR § 435.911(a) (1991).

The Commission also received testimony about handicapped children waiting for months for a medicaid eligibility determination in order to obtain a wheelchair.[56] One social worker described, as an example:

> [A] child . . . who is 4 years old and needs a wheelchair and we've been waiting for the medicaid for 4 months.
>
> This little girl needs this wheelchair so that she can sit down and enjoy just the other things that children enjoy, like watching TV, playing with toys. She's not able to sit on her own.
>
> It concerns me that a child here in Washington, D.C., cannot play. Like I heard a woman say one day, a child that cannot play is a dying child. And I think we have many dying children in the Latino community and they should be of concern to us.[57]

The backlog of 900 cases that existed in December 1990, when the Multicultural Health Rights Advocates Task Force first met with the IMA administrator, was reduced to 200 by May 1991. Allegedly, this was accomplished by denying most of the cases, often for failure to provide documentation, even though the applicant had provided all of the necessary documentation.[58]

In response to testimony critical of the IMA, its administrator emphasized that many of the District's Latinos are not U.S. citizens or legal residents and, therefore, may not be eligible for the federally funded programs, such as medicaid.[59] However, the chairperson of the Multicultural Rights Advocates Task Force, a social worker who works primarily with children who are United States citizens, testified that her clients experience widespread and significant problems in accessing benefits, despite their eligibility.[60] Other social workers who complained of problems in accessing benefits would also have been fully aware of eligibility barriers before they even sent their clients to apply for benefits.[61] In any case, if an applicant is determined to be ineligible, notice of that determination and the grounds for it should be communicated in a timely manner.

Child and Family Services

Some problems associated with the District's child and family services programs, such as its abuse and neglect and foster care programs, affect all segments of the population, regardless of race and ethnicity or geographical location in the city.[62] For instance, the foster care system has been declared violative of the constitutional rights of the foster children it serves by a Federal court, largely due to its shortage of social workers.[63] The District's efforts to remedy this problem have been slow.[64] However, at the time of the Commission hearing, Vincent Grey, director of the Department of Human Services, testified that he had just received approval from the D.C. Council to hire social workers under a provisional licensure program which would allow the social workers 1 year in which to take the exam. Mr. Grey stated that that would allow the District's recruitment of social workers to be competitive with surrounding jurisdictions where licensure requirements are not as strict as in the District.[65]

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[53] Rosario Testimony, *Hearing Transcript*, vol. 1, pp. 203, 226-27.

[54] Foltz Testimony, *Hearing Transcript*, vol. 1, p. 219.

[55] Rosario Testimony, *Hearing Transcript*, vol. 1, p. 205.

[56] Rosario Testimony, *Hearing Transcript*, vol. 1, p. 203.

[57] Ibid., pp. 203-04.

[58] Ibid., pp. 206-07.

[59] James D. Butts, Administrator, Income Maintenance Administration, Memorandum to Vanessa Ruiz, Assistant Corporation Counsel (undated).

[60] Rosario Testimony, *Hearing Transcript*, vol. 1, pp. 201-08; Rosario Interview, Nov. 15, 1991.

[61] Foltz Testimony, *Hearing Transcript*, vol. 1, pp. 215-21; McNeil Testimony, *Hearing Transcript*, vol. 2, pp. 558-64; McNeil Written Statement. *See also* Land Testimony, *Hearing Transcript*, vol. 1, pp. 221-26.

[62] *See* Thompson, "ACLU Says D.C. Losing Caseworkers," *Washington Post*, Jan. 7, 1992 (hereafter "ACLU Says D.C. Losing Caseworkers." For a discussion of the backlog of cases in the child abuse and neglect system, *see* Lewis and Ragland, "For D.C. Child Abuse Caseload, a Troubling Milestone," *Washington Post*, Sept. 24, 1992.

In addition to these systemwide problems, however, the District's Latino population faces other critical problems. In 1987 the D.C. Task Force Against Latino Child Abuse and Neglect was formed to address issues pertaining to child abuse, problems that still exist today at all steps in the process—from the initial reporting stage to placement in a temporary foster home.

The District of Columbia has established a 24-hour hotline for reporting allegations of child abuse and neglect. The Commission heard testimony that at the initial intake stage, a Spanish-speaking social worker is available on the emergency hotline only during regular working hours. As a result, "[i]f an emergency report comes in at 5 on a Friday afternoon, for example, more than the 48 hours allowed for investigation of emergency reports will elapse before a Spanish-speaking social worker is on duty to respond to the call."[66] Furthermore, Carla Branch, director of Social Services at the Latin American Youth Center, testified that individuals who call to report allegations of abuse or neglect involving a Hispanic child may be questioned regarding the child's immigration status or told that there are no bilingual placements available for such Spanish-speaking children.[67]

Maria Elena Orrego, city director of The Family Place, a community-based organization that focuses on the needs of families and children, testified that it takes "anywhere from a week to 10 days" for the Family Place worker to determine the name of the caseworker assigned to the case. Ms. Orrego explained:

> Our referral procedure includes calling protective services and immediately sending a letter of referral corroborating all the information provided directly on the phone and requesting a response within 48 hours.
>
> We specifically say you can either call us or write us back.
>
> To this day, CFSD case workers have not acknowledged a single letter of referral sent by our case workers, who are left with the only option of continuously and insistently calling CFSD to find out what is the status of the case.
>
> Meanwhile, we continue to work with the family to provide attention to the child or children found to be neglected or abused, knowing well that the child is at high risk and that we do not have the leverage to act upon and protect the child with the full force of the law.
>
> . . . .
>
> Our workers spend many hours on the telephone trying to obtain basic information, such as the name of the assigned social worker or obtaining the verification of the child's or children's safety.
>
> . . . .
>
> Presently, there is a perception among the Latino Child Abuse Task Force members that Child and Family Services Division members believe that Latino community-based case workers lack the judgment and the skills to determine if the child is at risk of being abused.[68]

Once reported, a case may still fail to receive appropriate followup, despite the efforts of the community-based organization that reported it to track the progress of the case. Ms. Orrego recounted as an example a neglect case in which The Family Place made a referral and, after many attempts to contact the social worker assigned to the case, learned that the paperwork had been lost, causing the case to be in "limbo." The paperwork never was found.[69] Another example involved a 5-year-old child who had been identified by a local community clinic as a victim of abuse and neglect. After a report was made to Child Protective Services, The Family Place spent 4 months trying to learn the name of the social worker assigned to the case. The Family Place was so concerned about the well-being of this child that it continued to document the child's needs through the agency's own resources, including securing a psychiatric evaluation. Ultimately, it took the full case history to the head of the Child and Family Services Division.[70] Ms. Orrego explained that this lack of support and failure to respond "in an effective way" erodes the trust of The Family Place, whose past reports have often involved children who "need[ed] to be protected at all cost."[71]

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[63] Thompson, "Judge Calls D.C. Foster System 'a Travesty,'" *Washington Post*, Apr. 19, 1991, p. A-1.

[64] *See* Thompson, "ACLU Says D.C. Losing Caseworkers,"; "More on Foster Children," *Washington Post*, July 28, 1992; "Report rips Reforms," *Washington Times*, July 29, 1992, p. B-1.

[65] Vincent Grey, Director, D.C. Department of Human Services, *Hearing Transcript*, vol. 1, pp. 339-40.

[66] Maria Elena Orrego, City Director, The Family Place, testimony, *Hearing Transcript*, vol. 1, p. 251. Ms. Orrego also testified to problems with the operation of the hotline in general: "Just a few days ago, a Family Place caseworker . . . called the hotline. She called three times. Every time, she let the telephone ring for about five minutes. Every time, the phone was answered but hung up again. This is a hotline that's supposed to provide immediate response to cases of child abuse and neglect." Ibid., p. 252.

[67] Carla Branch, Director of Social Services, Latin American Youth Center, testimony, *Hearing Transcript*, vol. 1, p. 239.

[68] Orrego Testimony, *Hearing Transcript*, vol. 1, pp. 253-55.

The legal services organization, Ayuda, voiced similar concerns in testimony before the D.C. Council in 1991:

> The Department of Human Services often takes no action in response to reports of child abuse or neglect in families where children and parents speak only Spanish. Agencies attempting to assist have been forced to wait until they could detail a history of incidents of abuse or neglect sufficient to outrage an attorney at the Office of Corporation Counsel, and persuade her or him that the children are at risk and the case should be petitioned: the "regular channels" for this process are closed to our community. This means that cases are only petitioned when they have reached a crisis stage: obtaining social services assistance to work with a family before it is in crisis, and children are threatened with foster care placement, is almost impossible.[72]

A Spanish-speaking family is most likely to be assigned a non-Spanish-speaking caseworker, as only 8 of the Family Services Administration's 80 social workers speak Spanish.[73] According to The Family Place's city director, the few Spanish-speaking social workers are often assigned cases that do not require their bilingual skills. As a result, they are not available to handle incoming cases that require bilingual skills.[74]

Once in the system, Hispanic children have been used during the court proceedings to interpret what their parents are saying.[75] This can create an inherent conflict of interest, as the child and parent may have adversarial positions on the case. In one such case, a 13-year-old child was used as an interpreter for her mother who reportedly had physically abused her.[76] According to Carla Branch, director of Social Services, Latin American Youth Center, the reasons given for the lack of an interpreter have been "Late notice. No interpreter available. Saturday court." Or, she added, "although the parents didn't speak English, the child understood English well enough" that it was concluded that no interpreter was needed. "Thus, the parents were left out of the proceeding."[77]

According to the Commission on Social Services, 23 out of a total of 2,300 children in foster care were of Hispanic origin, or 1 percent of the total, in 1991.[78] Fourteen of the District's more than 430 foster care providers have bilingual capability: 13 speak Spanish, and one, French.[79] There are no group homes with bilingual capability.[80] One community witness testified that the bilingual foster care providers in the system were recruited for specific children and that the District has never undertaken a concerted effort to recruit and license bilingual foster care providers.[81] The lack of bilingual foster care providers has had serious ramifications. The Commission was told, for example, about a sexually abused 15-year-old Hispanic girl who was to be placed in a foster home in Maryland in which no one spoke Spanish, until the Latino police officer involved in the child's removal from her home offered to take custody.[82] In testimony before the D.C. Council in 1991, Ayuda staff reported other examples:

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[69] Ibid., p. 258.

[70] Ibid., pp. 255-56.

[71] Ibid., pp. 260-61.

[72] AYUDA, Inc., written testimony, *Joint Public Roundtable*, p. 4.

[73] Wells and Grey Testimony, *Hearing Transcript*, vol. 1, pp. 355-356.

[74] Orrego Testimony, *Hearing Transcript*, vol. 1, pp. 252-53.

[75] Ibid., pp. 244-245.

[76] Carla Branch, Director of Social Services, Latin American Youth Center, interview in Washington, D.C., Oct. 4, 1992.

[77] Branch Testimony, *Hearing Transcript*, vol. 1, p. 245.

[78] Vanessa Ruiz, Deputy Corporation Counsel, Government of the District of Columbia, memorandum to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Jan. 27, 1992.

> In one child neglect case in 1990, three Spanish-speaking children [siblings] were placed in two separate non-Spanish-speaking foster homes, compounding the children's fear and sense of abandonment after being removed from their mother's home. In another, the Department of Human Services assigned a non-Spanish-speaking social worker to handle the case of a refugee minor from El Salvador with leukemia—the social worker thus cannot communicate with the child she is assigned to serve and is responsible for protecting.[83]

The Youth Services Administration maintains no bilingual group homes for delinquent children. It is estimated that 50 of the 800 juveniles under the Youth Services Administration are Latino, and that on average there are approximately 10 Latino juveniles in the shelter or group homes.[84] Angela Jordan Davis, director of the D.C. Public Defender Service, testified that she knew of only one Latino youth who "did not run away from the group or shelter home that he was placed in."[85] Ms. Davis explained:

> And the reason for that is because there are no Spanish-speaking people—staff, I should say—in any of the shelter homes or group homes. So a child is basically living there and there's no one there that he can talk to.
>
> Yes, there are rules of the group home. But if you don't understand the language, how do you know what the rules are? You can't keep the rules if you don't know what the rules are.
>
> If there's a fight between a Latino youth and a black youth, the staff are going to side with the black youth because they understand what he's saying. He's saying, "I didn't do it." The Latino, he's probably saying, "I didn't do it," too but because they understand what the black youth is saying, they say, "Okay. I take your side. That's the only side I understand."
>
> Who wouldn't run away from that situation? And it's serious because when you run away, then you're going to be locked up. And that's unfair.[86]

In contrast, the placement of Latino children in residential foster facilities by the Youth Services Administration brought favorable comment from one social worker active in the Latino community:

> We have had very good success with the residential treatment unit in placing young people in residential facilities. When we have needed to go before them, they have been extremely responsive. Now, again, I would like to point out that all of the time we have presented children for residential review, we have done so under the PINS or delinquency system, and have had much more success in getting them treated. We have a young man now in a very, very good treatment facility in Arizona. It's very expensive and no one at YSA [Youth Services Administration] asked me about his legal status before selecting him for that facility.
>
> So it was very gratifying. And YSA has been . . . very responsive in this area.[87]

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[79] Vanessa Ruiz, Deputy Corporation Counsel, Government of the District of Columbia, memorandum to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, April 1, 1992, attaching information supplied by the District government pursuant to U.S. Commission on Civil Rights' Request for Additional Information.

[80] Vanessa Ruiz, Deputy Corporation Counsel, Government of the District of Columbia, memorandum to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Jan. 27, 1992.

[81] Branch Testimony, *Hearing Transcript*, vol. 1, p. 240.

[82] Ibid., p. 247.

[83] AYUDA, Inc., written testimony, *Joint Public Roundtable*, pp. 3-4.

[84] Angela Jordan Davis, Statement and Preliminary Report of the District of Columbia Public Defender Service, *Hearing Transcript*, January 31, 1992, pp. 28-30.

[85] Angela Jordan Davis, Director, D.C. Public Defender Service, testimony, *Hearing Transcript*, vol. 2, p. 345.

[86] Ibid., p. 346.

In its *Latino Blueprint for Action*, the D.C. Latino Civil Rights Task Force identified other areas of concern to the Latino community that are within the authority and jurisdiction of the Department of Human Services. These include services for Latinos who are elderly, disabled, or in need of day care services.[88] Although the Commission has not explored these concerns in this report, they have been raised by the Latino community and are of equally serious concern to it.

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[87] Branch Testimony, *Hearing Transcript*, vol. 1, p. 244. With respect to residential treatment facilities, the Commission on Mental Health's Child and Youth Services Administration (CYSA) reported that it had only three Hispanic clients (out of a total 265 clients), only one of whom could not speak English. This youth was placed in a bilingual residential facility close to the Mexican border (the majority of CYSA's placements are outside of the District). Anne Younes, Ed.D., Residential Placement Unit, Child and Youth Services Administration, Commission on Mental Health Services, memorandum to Vanessa Ruiz, Deputy Corporation Counsel, Jan. 27, 1992.

[88] D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action*, Final Recommendations to the District of Columbia Government (1991), pp. 61-70.

Chapter 8. Latino Access to Health Care

Among the issues the D.C. Latino Civil Rights Task Force raised in the wake of the Mount Pleasant disturbance was the concern that Latinos in the District of Columbia are not receiving adequate health services, mental health treatment, substance abuse counseling, and alcohol abuse treatment.[1]

The Latino community in the District of Columbia faces linguistic, cultural, and financial barriers to access to health care. Limited English proficiency prevents many Latinos from communicating with health care practitioners. Cultural barriers confronting District Latinos include limited knowledge of the U.S. health care system, such as not knowing where to go for low-cost health care, and the reluctance to incur medical debts because of beliefs that these could lead to imprisonment and/or deportation.[2] Low income levels and lack of health insurance restrict the health care options of most Latinos in the District of Columbia to public hospitals and clinics and low-cost community clinics.[3]

District of Columbia health facilities have not succeeded in helping Latinos to overcome these barriers. The severe shortage of bilingual staff in many area facilities, the unavailability of interpreters, and the absence of Spanish-language forms, informational signs, and brochures all limit Latinos' access to adequate health care. Few District health care facilities both provide low-cost health care and are located within or in close proximity to Latino neighborhoods, and those that are have limited resources. In general, District health care agencies undertake too little outreach to the Latino community. Although the shortage of bilingual medical personnel is an important impediment to adequate health care for Latinos in the District of Columbia, the District is doing little to eliminate this shortage.

Health Care Facilities Serving Latinos in the District of Columbia

The health care needs of Latinos in the District of Columbia are largely served by D.C. General Hospital, by public clinics operated by the D.C. Commission of Public Health, and by a handful of community-based clinics.

D.C. General Hospital

D.C. General Hospital is the only public general hospital in the District of Columbia.[4] As such, it serves all District residents in need of medical care, regardless of ability to pay and citizenship. It serves a growing, though not large, number of Latinos, comprising about 5 percent of its patient population. A particularly large percentage of the hospital's obstetric patients, about 16 percent, are Latinos.[5]

The hospital has 16 Hispanic employees, less than 1 percent of its total staff of 2,351. The Hispanic employees include an admissions director, a substance abuse director, a telephone operator, a few clerks, a few nurses, a technician, a social worker, an operating room worker, a doctor who is director of physical medicine and rehabilitation, and a physical therapist. They are all in permanent positions, except for the physical therapist, who is temporary.[6] To help it recruit additional Hispanic employees, the hospital hired an Hispanic employment program coordinator in August 1989. The Hispanic coordinator assisted in identifying and hiring Hispanic employees and worked with the Hispanic community to increase the number of Hispanic applications. In November 1991, the coordinator resigned. At the time of the hearing, the hospital was recruiting to fill the vacancy.[7]

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[1] D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action* (Washington, D.C., October 1991) pp. 61-70 (hereafter *Latino Blueprint*).

[2] Juan Romagoza, Director, Clinica del Pueblo, testimony, *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, 1992, vol. 1, pp. 406-07 (hereafter *Hearing Transcript*).
Also, a 1990 *Washington Post* poll found that only 28 percent of District residents were aware of the District's health clinics. Ignorance of District clinics is no doubt much greater among Hispanics who are recent immigrants and have a language barrier and low literacy. *See* Annie Acosta, Testimony before the Joint Public Roundtable of the Committee on Human Services and the Committee on Public Services, Council of the District of Columbia, Washington, D.C., on "Provision of Services to the Hispanic Community by the Department of Human Services," Feb. 14, 1991 (hereafter *Joint Public Roundtable*).

[3] Romagoza Testimony, *Hearing Transcript*, vol. 1, pp. 406-07.

[4] District of Columbia, Office of Policy and Program Evaluation, *Indices: A Statistical Index to District of Columbia Services*, vol. VIII, (Washington, D.C., August 1991), p. 253 (hereafter *Indices 1991*).

[5] Mark Chastang, Executive Director of D.C. General Hospital, testimony, *Hearing Transcript*, vol. 2, p. 477.

D.C. General's emergency room is a primary source of health care for the District's Latinos because many of them are poor and uninsured, and, to the extent that they do not receive low-cost or free medical care at health clinics, they are likely to seek health care only for acute conditions that need immediate treatment. The complexity inherent in navigating emergency room procedures poses a barrier to limited-English-proficient Latinos unless bilingual staff are available to assist them. However, at least one clinic avoids sending patients to D.C. General's emergency room or tries to send a staff person with them to help navigate the system, because of uncertainty about whether bilingual personnel will be present to interpret for patients who cannot speak English.[8]

D.C. General has adopted several strategies for reducing the language barrier facing limited-English-proficient patients. First, the hospital maintains a language bank, a list of 120 employees who serve as interpreters. Of these, 22 speak Spanish. Employees serving as interpreters assume these duties in addition to their normal duties and are not compensated for the additional function.[9] Nevertheless, a Spanish-speaking employee is not available to act as an interpreter at all times during the day and on weekends.[10]

Second, the hospital administration has contracted for telephonic interpreter services for limited-English-proficient patients, including Spanish speakers.[11] However, the impersonal and alienating effect of three-way telephone communications is likely to hinder normal staff-patient interactions, making the telephonic language line an imperfect means of communication except for telephone inquiries to the hospital.

Third, the hospital has bilingual signs throughout,[12] and it provides some written materials in Spanish. For example, Mark Chastang, executive director of D.C. General, testified that forms informing patients of their rights and the risks of particular procedures are provided in Spanish.[13] The hospital furnished the U.S. Commission on Civil Rights with more than 40 brochures and flyers written in Spanish. All but one dealt with gynecological, obstetrical, prenatal, and postnatal care, and only four pieces were developed by D.C. General itself.[14] The

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[6] *See* Theresa G. Bass, Associate Administrator, Human Resources, District of Columbia General Hospital, testimony, *Hearing Transcript*, vol. 2; and Theresa G. Bass, Associate Administrator, Human Resources, District of Columbia General Hospital, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Jan. 24, 1992 (hereafter Jan. 24 Bass Letter).

[7] Bass Testimony, *Hearing Transcript*, vol. 2, p. 469.

[8] Dr. Janell Goetcheus, Medical Director, Columbia Road Health Service, testimony, *Hearing Transcript*, vol. 1, pp. 401-02.

[9] Chastang Testimony, *Hearing Transcript*, vol. 2, pp. 466-67. *See also* Theresa G. Bass, Associate Administrator, Human Resources, District of Columbia General Hospital, letter to Carol McCabe Booker, General Counsel, United States Commission on Civil Rights, Jan. 17, 1992 (hereafter Jan. 17, 1992 Bass Letter).

[10] Bass Testimony, *Hearing Transcript*, vol. 2, p. 470.

[11] LaBaron Frost, Labor Relations Director, District of Columbia General Hospital, testimony, *Hearing Transcript*, vol. 2, p. 470. The telephonic language line provides a 24-hour a day interpretive service via a three-way conference call. The service identifies the language needing interpretation, then connects a highly qualified interpreter in any of 140 languages and dialects. When a non-English-speaking person telephones an agency with this service, the delay to connect to the service and respond to the caller may be much less than a minute. Mark J. Chastang, Executive Director, District of Columbia General Hospital, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Mar. 27, 1992, Attachment 3 (hereafter Chastang Letter).

[12] Chastang Testimony, *Hearing Transcript*, vol. 2, p. 468.

[13] Ibid.

[14] About 60 percent of the brochures were published by drug companies. Another 20 percent were published by the Federal Government

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hospital's pharmacist uses a one-page English-Spanish guide to translate instructions for taking prescription medication into Spanish.[15]

To enhance its ability to communicate with limited-English-proficient Latino patients, D.C. General seeks to encourage its employees to learn Spanish by offering a Spanish course that teaches functional communication in the language. All employees are eligible to participate. At the time of the hearing, about 15 had just completed the class, and an intermediate class was planned, so that employees who had completed the first course could progress further.[16]

The hospital has made few recent efforts to recruit and hire more bilingual staff, however. During 1991 it posted approximately 225 position vacancy announcements. Only one announcement during this period indicated that bilingual skills would be a ranking or selective factor—the recently vacated position for the Hispanic employment program coordinator. A vacancy announcement for a police officer or security guard requiring the candidate to be bilingual in Spanish was posted during the previous year, on February 9, 1990.[17]

Recent advertisements for health professionals to staff the hospital's Ambulatory and Critical Care Center, which opened in 1992, show no sign that the hospital is making an effort to recruit Latinos. A feature article and four help-wanted advertisements list immediate openings for clinical nurses, critical care nurses, medical technologists, pharmacists, respiratory therapists, resuscitation nurse specialists, and trauma technologists. Except for containing the code letters E.O.E. (i.e., equal opportunity employer), none explicitly encourages Latinos or bilinguals to apply.[18] However, hospital staff testified that three or four advertisements were placed in Spanish newspapers to recruit Hispanics or Spanish-speaking personnel, particularly nurses.[19]

Recruitment efforts that the hospital has undertaken in the past have not been successful. For instance, in one recruitment effort, the hospital tried to attract nurses from El Salvador. The hospital provided training programs to help Central Americans pass required licensing exams and used nurses to encourage them to take classes leading to certification. Despite these efforts, hospital staff testified that the prospective nurses seldom passed the licensing exam.[20]

D.C. General has an extensive volunteer program, but it does not have volunteer or auxiliary groups that target Hispanics to work in the hospital and solve communication problems with Latino patients.[21] In particular, the hospital does not apply for Federal funding for training programs that encourage minorities or limited-English-proficient students to pursue health professions and that could be used as a means of increasing its Spanish-speaking staff.[22]

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or national non-profit organizations. Three flyers are printed by other District of Columbia agencies, including a letter from the previous Mayor and a community clinic's flyer on AIDS education. The four pieces developed by D.C. General Hospital include instructions for checking the mother and baby out of the hospital, an explanation of an epidural anesthetic, instructions and a form for monitoring a baby's kicking, and a pamphlet on postpartum care ("Taking Care of Yourself After Discharge"). The pamphlet includes telephone numbers for various D.C. General services and for the District's public clinics—the two with and those without bilingual personnel. The Mayor's Office on Latino Affairs translated the pamphlet and one other brochure.

[15] Chastang Letter, Attachment 3.

[16] Chastang Testimony and Frost Testimony, *Hearing Transcript*, vol. 2, pp. 482-83.

[17] *See* Jan. 17, 1992 and Jan. 24, 1992 Bass Letters and Chastang Testimony, *Hearing Transcript*, vol. 2, p. 469. Ms. Bass suggested that a position may have been advertised for a bilingual clerk. Ms. Bass' correspondence did not include any announcement for a bilingual or Hispanic clerk.

[18] In contrast, Family Planning Centers in Washington, D.C., and Virginia advertise positions requiring bilingual Spanish. (*See* "D.C. General Hospital Staffing Up New Ambulatory and Critical Care Center," in *Jobs & Business Opportunities* (Metropolitan Washington), vol. 2., no. 15, Apr. 3 - Apr. 16, 1992, pp. 1, 6, & 7).

[19] Bass Testimony, *Hearing Transcript*, vol. 2, p. 469.

[20] Frost Testimony, *Hearing Transcript*, vol. 2, p. 476.

[21] Chastang Testimony, *Hearing Transcript*, vol. 2, p. 480.

[22] Ibid. The Public Health Service Act authorizes the Federal Government to give grants to hospitals for training programs aimed at recruiting minority and disadvantaged students, including persons with limited English proficiency, into health professions. (*See* 42 U.S.C. §

Along with efforts to overcome the language barrier, such as recruiting bilingual employees, outreach efforts to the Latino community to overcome cultural barriers are an important means of providing Latinos with equal access to health care. Mr. Chastang described a number of ways D.C. General tries to reach out to members of the communities around it, including the Latino community. First, the hospital has a Community Relations Committee to increase awareness and sensitivity to community issues, to promote communication with the community, and to help address problems. At the time of the hearing, the committee had no Latino representation, because its only Latino member had recently died.[23]

Second, the hospital operates some programs directed toward helping the Latino community, including a child immunization initiative launched in February 1992. Finally, the hospital has held many health fairs providing screening for particular diseases. Fairs have been periodically held in the Latino community[24] but have been recently discontinued.[25]

Although the hospital has not done any formal needs assessment to improve service delivery to the Latino community, it has an ongoing committee of hospital employees, formed 3 years ago, to discuss the problems associated with the Latino community. In response to recommendations by this committee, the hospital hired the Hispanic employment program coordinator, increased efforts to recruit Hispanic or Spanish-speaking personnel, and established the bank of interpreters to improve communication with limited-English-proficient patients.[26]

Health Care Clinics

The facilities for health care in the Adams Morgan-Mount Pleasant communities include clinics operated by the District's Commission of Public Health and many community-based clinics.

D.C. Commission of Public Health. The Commission of Public Health (CPH) in the Department of Human Services operates 25 public health clinics throughout the District of Columbia providing a range of specialized and primary outpatient health services (including programs such as alcohol and drug abuse treatment).[27] In the Mount Pleasant vicinity, CPH operates two medical clinics and one dental clinic. The medical clinics, the Adams Morgan Health Center and R Street Clinic, estimate their Latino patient loads to be 95 percent and 50 percent, respectively,[28] and together they account for more than 10 percent of all visits to CPH clinics, apart from maternal and child health care.[29]

A community witness testified that there are not enough bilingual employees at D.C. public health clinics.[30] Only 18 Spanish-speaking personnel work in all 25 CPH clinics. Not surprisingly, they are concentrated in the R Street and Adams-Morgan clinics. The R Street Clinic has seven Spanish-speaking employees (two medical clerks, three medical officers, a

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295h-5 (1988) and accompanying regulation, 42 C.F.R. § 58.408 (1991).) Public or nonprofit private entities that provide health services and have an affiliation with a junior college, college, or university are eligible grantees. (*See* 42 C.F.R. § 58.402-e3. (1991).) As a training hospital with teaching programs associated with the Schools of Medicine at Howard and Georgetown Universities (*see* Chastang Testimony, *Hearing Transcript*, vol. 2, p. 483.), D.C. General appears to meet the eligibility criteria for grantees.

[23] Chastang Testimony, *Hearing Transcript*, vol. 2, p. 474.

[24] Ibid., p. 481.

[25] Interviews with Arlene Gillespie, Former Director of the Mayor's Office on Latino Affairs, and Mara Lopez, Acting Director, Mayor's Office on Latino Affairs, on Nov. 25, 1991 and Oct. 23, 1991, respectively. Gillespie and Lopez stated that the "Back to School Health Fairs" were initiated by the Office on Latino Affairs in cooperation with the D.C. Commission of Public Health.

[26] Bass Testimony, *Hearing Transcript*, vol. 2, pp. 465-470.

[27] *Indices 1991*, p. 260; Mohammed Akhter, Commissioner of Public Health, District of Columbia, Testimony, *Hearing Transcript*, vol. 1, pp. 422-23, 426.

[28] Mohammed N. Akhter, M.D., M.P.H., Commissioner of Public Health, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Jan. 17, 1992 (hereafter Akhter Letter).

[29] The R Street Clinic provided care for about 8,200 visits and the Adams Morgan health clinic provided care for about 6,350 visits, while CPH clinics combined provided care for over 94,500 visits, excluding maternal and child health care and dental care visits. The Adams-Morgan Dental Clinic had 2,900 visits compared to almost 27,000 visits for all CPH dental clinics during that year. Ibid., Attachment B.

[30] Romagoza Testimony, *Hearing Transcript*, vol. 1, p. 407.

social worker, and a health technician); two are temporary positions. Four Spanish-speaking staff work in the Adams Morgan Health Center (a social worker, a nutritionist and two clerks), and two more in its dental clinic. Of these, only three held permanent positions.[31]

According to Commissioner of Public Health, Dr. Mohammed Akhter, recent budget cuts have forced CPH to lay off workers rather than recruit bilingual staff. He stated that CPH had recently recruited only nurses and had hired approximately 25 or 30. None of these was Spanish-speaking, however. Dr. Akhter testified that no one with bilingual capabilities applied who met the requirements of having an R.N. and a license to practice in the District of Columbia.[32]

Like other vacancies in the District of Columbia, CPH positions are filled with the help of the District Department of Personnel, which advertises them and certifies qualified candidates. Dr. Akhter stated that he had not asked the Department of Personnel to use bilingualism as a ranking or selective placement factor in recruiting clinic employees.[33]

Dr. Akhter maintained that CPH had been understaffed and underfunded for many years and that recent cuts were adding to CPH's difficulties in providing for the needs of the community.[34] Nevertheless, he stated that he hoped to upgrade the CPH clinics with help from the Centers for Disease Control in Atlanta, Georgia, and revamp them with a community approach to medicine. Under this approach, CPH would establish advisory boards—one for the Commission of Public Health to permit public participation and oversight of the Commission's programs and one, consisting of neighborhood people, for each clinic to help plan the clinic's future. To determine and plan what services are needed, medical personnel would meet with community leaders, bring services to the community rather than expecting people to come to clinics and hospitals, and make house-to-house visits.[35]

A recent Mayoral Health Care Summit sought community input and made recommendations of ways to improve the District's health care system and financing, including recommendations for CPH. Objectives of the summit were, among others, to identify and prioritize the key issues facing the District of Columbia's health care system and to develop strategies to involve the entire community in the management of its health.[36] None of the summit's recommendations explicitly targets the Latino community, however, although some may address their concerns more generally. For example, one states "Reduce the barriers that inhibit District residents' access to health service." Another recommends, "Improve the Quality and Integration of Existing Health Care Clinics by Directing new resources to District-run public health clinics; strengthening the 'free clinic' system. . . ."[37]

Neither the recommendations of the Mayor's Health Care Summit nor the Commissioner of Public Health's plans for upgrading the delivery of health care demonstrates sensitivity to the Latino community's difficulty in accessing affordable health care or their need for communication with Spanish-speaking professionals.

Community-Based Clinics. Latinos use the community-based clinics in the Adams Morgan and Mount Pleasant areas because these clinics have bilingual staff.[38] Many such clinics already have large backlogs of patients. These community-based clinics have limited resources because they charge minimal fees and receive very little public funding, particularly from the District of Columbia. Nevertheless, it is feared that reductions in District funding may force them to reduce their services to the Latino community.

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[31] Akhter Letter, Attachment C.

[32] Akhter Testimony, *Hearing Transcript*, vol. 1, p. 438.

[33] Ibid., pp. 437-38.

[34] Ibid.

[35] Ibid.

[36] Health Systems Research, Inc., "The Mayor's Healthcare Summit '91: A Mandate for Change," DRAFT (Washington, D.C.: District of Columbia Department of Human Services, Dec. 31, 1991).

[37] Ibid., Executive Summary.

[38] For instance, a community witness has stated that getting an appointment at bilingual health centers in the District could often take a month or two. She found that Latino patients she had referred to the Upper Cardozo Clinic for syphilis treatment were turned away because of the backlog in appointments. Sonia L. Ordonez, testimony, *Joint Public Roundtable*; Acosta Testimony, *Joint Public Roundtable*.

The primary bilingual free health clinic serving the Latino community is the Clinica del Pueblo.[39] It relies heavily on volunteer health care practitioners to provide free services to the Latino community. It has greatly expanded its services since it started in 1983, reflecting the needs of its clientele. In 1991 the clinic served 6,000 patients with 6 full-time staff, 2 part-time people, 5 consultants, and 92 volunteers. Its programs now cover medical care, health education, mental health, sexually transmitted diseases (including AIDS), and women and family programs.[40]

Another clinic serving the Latino community is the Columbia Road Health Services clinic, which serves about 2,000 Hispanic clients from the Adams Morgan community, representing about 71 percent of its total patient population.[41] Sister Maureen Foltz described the tremendous need for low-cost health care for the Columbia Road Health Services clientele, which is likely to characterize the clienteles of other clinics as well. Most of the patients are unemployed or underemployed. Of the 2,000 Hispanic patients, 1,308 have annual family incomes of less than $14,000 a year (for four persons). Only 68 of the 1,308 have any medicaid coverage. Although the majority of Latino clients are most likely eligible for benefits, 75 percent of them probably never complete the application process.[42]

Pediatric Care

Pediatric care clinics that provide bilingual assistance to Latinos have greater backlogs than clinics that do not, indicating that Latinos' pediatric care needs may be being disproportionately underserved.

The Community Pediatric Health Care Program of Children's Hospital operates two clinics. The Adams Morgan clinic is in the basement of the Marie Reed Learning Center at 2200 Champlain Street, NW. The Shaw clinic has existed for 25 years and has been located at 2220 Eleventh Street, NW, for more than 10 years. Both clinics provide identical services: pediatric health care, well- and sick-child care, immunizations, social work services, and nutrition services. Each location has two pediatricians, nutritionists, and nurses. The Shaw clinic also has a pediatric nurse practitioner.[43] The clienteles of the two clinics differ, however: both serve very low-income populations, but the Adams Morgan clinic's clientele is predominately Latino, and the Shaw clinic's clientele is predominately black.[44]

The Adams Morgan clinic has 17 staff members, a large number of whom are Hispanic. Over 90 percent are bilingual. Those who are not bilingual, including newly hired people, are scheduled to take medical Spanish courses at Children's Hospital. Although the Shaw clinic has served only a small number of Latino clients over the years, it also has bilingual personnel, but a smaller proportion.[45]

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[39] The Clinica del Pueblo's budget is approximately $250,000 per year. About 80 percent of the financing comes from private foundations and the other 20 percent comes from institutions and private donations. Currently, the Clinica is not funded by the District of Columbia, but receives various in-kind services from the city, including protection against malpractice, and free vaccines and laboratory tests. *See* Vanessa Ruiz, Deputy Corporation Counsel, District of Columbia Government, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Mar. 31, 1992, and Apr. 1, 1992, attachment 12 (hereafter Ruiz Letter, Attachment 12). *See also* Juan Romagoza, Director, Clinica del Pueblo, testimony, *Hearing Transcript*, vol. 1, p. 417.

The Clinica did receive funding from the city in 1988, but the District funds were only 10 percent of the budget. Romagoza Testimony, *Hearing Transcript*, vol. 1, p. 417.

[40] Ibid. *See also* Ruiz Letter, Attachment 12.

[41] The clinic charges according to a sliding fee scale. Sister Maureen Foltz, Social Worker, Columbia Road Health Services, testimony, *Hearing Transcript*, vol. 1, p. 222. *See also* Goetcheus Testimony, *Hearing Transcript*, vol. 1, pp. 400-05.

Private donations provide most of the funds for the Columbia Road Health Service. The remainder, about 30 percent of the budget, comes from fees paid for services according to a sliding scale. None of the income comes from the District of Columbia government. However, the Columbia Road Clinic reduces costs by using the City laboratory for certain blood tests and pap smears. Ibid.

[42] Foltz Testimony, *Hearing Transcript*, vol. 1, pp. 222-23.

[43] Sandra Coles-Bell, Director, Community Pediatric Health Care Program, Children's Hospital, testimony, *Hearing Transcript*, vol. 1, pp. 384-93.

[44] Ibid.

The Adams Morgan clinic is much busier and has a much longer backlog of clients waiting for appointments. At the Adams Morgan clinic, appointments cannot be scheduled for 2 months. The Shaw clinic has about a 2-week backlog.[46]

There are several indications that the limited bilingual health care facilities available to the Latino community contribute to the long backlog of the Adams Morgan clinic. First, many clients left the clinic's care when it started charging for services. Staff at one clinic that received some of them were distressed because their clinic did not have sufficient bilingual staff to speak to the new clients. But despite the charges, these clients are now coming back to the Adams Morgan clinic because of the special care they receive.[47]

Second, some of the Adams Morgan clinic's clients are now going to other clinics because the other clinics hired staff trained to speak to them. For example, by filling positions with bilingual staff, encouraging staff to take medical Spanish courses, and having more staff who could speak to Latinos at the clinic or on the telephone, the Shaw clinic has attracted Latino clients. The Community Pediatric Health Care Program has tried to transfer some of the Adams Morgan clinic's backlog to the Shaw clinic using this strategy.[48]

Because many agencies are competing to hire bilingual personnel, recruiting them has become more difficult than in the past. The Adams Morgan and Shaw clinics have been successful in recruiting bilinguals because they have hired inexperienced people directly out of high school and trained them. They also hire people on a temporary basis and make them permanent after they are trained. They advertise in the newspapers and rely on the networks of their bilingual and Hispanic staff to find people. The Children's Hospital Human Resources Department also contacts a number of agencies.[49]

Mental Health Services

Access to mental health services was another concern raised at the hearing because many recent Latino immigrants suffer from post-traumatic stress syndrome owing to their flight from a war-torn region and experiences of prolonged incarceration, violence, and torture. Moreover, language barriers create frustration and social isolation that also contribute to mental stress. The D.C. Latino Civil Rights Task Force stated that "mental health facilities that serve the Latino community are unable to meet the [demand]." In particular, the task force stated that elderly Latinos in nursing facilities are not given adequate mental health care and that the District has a lack of bilingual services and multicultural sensitivity in residential settings.[50]

Although Washington, D.C., has a comprehensive network of government and private mental health care delivery organizations, the services available to those with low or below poverty-level incomes and those without health insurance are very limited. Public mental health clinics[51] and community-based organizations[52] are the only services available to uninsured and poor Latinos. Many anticipate that funds for these services will be cut significantly in the near future.[53]

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[45] Ibid.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] *Latino Blueprint*, p. 67.

[51] The public mental health clinics are operated by the Department of Human Services' Commission on Mental Health Services.

[52] Community-based organizations that offer mental health services in the District include Andromeda Transcultural, the Washington Free Clinic, the Educational Organization for United Latin Americans, the Clinica del Pueblo, and the Clinica del Centro Catolico Hispano, and the Latin American Youth Center.

[53] *Latino Blueprint*, p. 67.

Among community-based organizations and public mental health clinics available to Latinos, few have adequate bilingual staff. By one account, only the Commission on Mental Health Services' Multicultural Center and the Clinica del Pueblo have enough Latino personnel.[54]

The Department of Human Services' Commission on Mental Health Services provides mental health services through St. Elizabeth's Hospital and two outpatient clinics: the Multicultural Center at 16th and U Streets and the Northwest Family Center. St. Elizabeth's Hospital provides inpatient services for individuals suffering from psychiatric crises. Prior to October 1, 1987, the Federal Government supported this hospital. However, beginning on that date, the District of Columbia assumed fiscal responsibility for it.[55]

Dr. Ricardo Galbis, the director of Andromeda Transcultural, a community clinic that provides mental health services to Latinos,[56] testified that St. Elizabeth's does not have adequate bilingual staff to meet the needs of Latinos referred there.[57] Moreover, he suggested that the District's two mental health centers for outpatients are not able to meet the growing demand for services resulting from the increase in the size of the District's Latino community.[58] The centers have few bilingual staff to make their services accessible to Latinos. In 1990 the Commission on Mental Health Services had 3,275 employees, but only 39 were Latinos.[59]

In 1980 the Commission on Mental Health Services established the Multicultural Center to serve Latinos. It provides mental health services to adults, children, and families. Daily activities in Spanish include individual, group, family, and multifamily therapy; education in health, sexuality, English as a second language, and adaptation to U.S. culture; and Alcoholics Anonymous. The Multicultural Center's clinicians provide consultation and translation services to staff and patients at St. Elizabeth's Hospital. A school-based program provides diagnosis, evaluation, and treatment to help multiethnic children adjust to school. Finally, its medical clinic provides physical examinations and followup care.[60] The Multicultural Center has a predominantly Hispanic staff. Thus, a large portion of the 39 Latinos the Commission on Mental Health Services employs are employed at this Center.

Dr. Galbis, however, faults the Commission on Mental Health Services for poorly planning its community services. According to Dr. Galbis, the Multicultural Center has a caseload of fewer than 300 clients and a 2-month waiting list.[61] Furthermore, he contends that, in setting up the Multicultural Center, the commission did not coordinate or cooperate with community-based organizations, such as Andromeda, and it duplicated services they offered, and nearly destroyed them.[62] Moreover, Dr. Galbis indicated that community based organizations, such as Andromeda, provide health care that is more responsive to the needs of the Latino community at far less cost, in large part due to the use of volunteer staff and trainees.[63]

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[54] *See* Ricardo Galbis, Director, Andromeda Transcultural, testimony, *Hearing Transcript*, vol. 1, pp. 399-401.

[55] *Indices 1991*, p. 264.

[56] Andromeda Transcultural Mental Health Center is a private, non-profit organization. Its six programs provide professional mental health services, particularly counseling for victims with post-traumatic stress disorder, alcohol and drug abuse treatment, and special assistance for troubled Cuban refugees who arrived during the "Mariel Boatlift." It also has a 24-hour hot line, La Voz Amiga (the Friendly Voice). Galbis Testimony, *Hearing Transcript*, vol. 1, pp. 414-15.

[57] Galbis Testimony, *Hearing Transcript*, vol. 1, p. 401.

[58] *Latino Blueprint*, p. 67.

[59] Galbis Testimony, *Hearing Transcript*, vol. 1, p. 412.

[60] *See* Statement of Dr. Robert A. Washington, Acting Director, Department of Human Services, *Joint Public Roundtable*.

[61] *See* the report of the Mental Health Sub-committee, Department of Human Services Committee, D.C. Latino Civil Rights Task Force, Dr. Ricardo Galbis, chairperson. *See also* Galbis Testimony, *Hearing Transcript*, vol. 1, p. 417.

[62] Ibid., p. 411.

[63] Ibid. For example, Andromeda takes advantage of a law that permits people with health care training to act as mental health counselors. The clinic selects people with master's degrees and a knowledge of the Spanish language, then trains them as mental health counselors.

The Commission on Mental Health Services, however, disputes Dr. Galbis' claim that Andromeda provides health care at lower cost. According to the Commission, Dr. Galbis underestimates the services the Commission provides by counting only registered outpatients and overlooking the much larger number of patients who were screened, evaluated, diagnosed, and referred.[64] Furthermore, as evidence that its services are not so poorly planned or insensitive to Latino needs, the Commission on Mental Health Services plans to conduct a needs assessment during 1993 and 1994. The assessment will estimate the prevalence of mental illness among Hispanics and the extent to which their psychiatric needs are unmet.[65]

HIV and AIDS Services

Human Immunodeficiency Virus (HIV) and the more serious Acquired Immune Deficiency Syndrome (AIDS) to which it leads is one of the most critical problems confronting the Latino community. AIDS is growing at an alarming rate among Hispanics in the United States. From 1986 to 1989, the number of cases of AIDS among Hispanics doubled. Although Hispanics represent 9 percent of the U.S. population, in January 1992, they accounted for more than 16 percent of all reported AIDS cases. AIDS ranks sixth among the major causes of death for Hispanics, but it is not among the top ten causes of death in the non-Hispanic white population.[66] Furthermore, the results of HIV-antibody tests indicate that the number of AIDS cases will continue increasing rapidly among Hispanics in the future. Positive HIV tests among Hispanics occur more than twice as often as among non-Hispanic whites and about one and a half times more often than among blacks.[67]

Twenty-one percent of all U.S. women with AIDS are Hispanic. The risk of acquiring AIDS is more than eight times greater for Hispanic women than for white women. The chance of acquiring AIDS through heterosexual contact is more than 11 times greater for black and Hispanic women than for white women.[68]

Washington, D.C., has the highest incidence of AIDS per capita,[69] and AIDS is a serious threat in the District of Columbia's Latino community, particularly for Latino women. Although typically only 20 percent of AIDS victims are women, more and more women in the Latino community are coming to be tested for HIV.[70] A majority of Hispanic adolescents do not know how AIDS is transmitted and have misconceptions about the disease.[71] Cultural attitudes toward sex and drugs and lack of education have a

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The training requires rotations in a hospital and at Andromeda. It includes training in culturally sensitive treatment of persons with HIV, mental illness, and substance abuse. Currently, the clinic has four university-placed trainees. They are required to spend at least six months training at Andromeda. Unfortunately, Andromeda has had difficulty acquiring and keeping Spanish-speaking personnel. Once Andromeda's staff are trained, other mental health providers typically hire them at higher salaries.

Andromeda also has had difficulty gaining approval for its training program from local universities. At least one university requires a student placed in a work setting to be supervised by a person with a doctorate in social work. Although Andromeda has three fully-qualified and approved professionals in its clinic, none has an advanced social work degree. The clinic is now trying to arrange for staff from one of the major local universities to provide the supervision, hoping the supervisors will come and learn about the community, too. No financial contributions would be exchanged.

[64] Vanessa Ruiz, Deputy Corporation Counsel, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992 (hereafter Ruiz Letter, Attachment 3).

[65] Ibid., Attachment 4.

[66] Aida L. Giachello, "Critical Issues Facing Hispanics/Latinos in the Area of Health Care in the United states," testimony at the U.S. Senate Democratic Hispanic Task Force, Hearing on Critical Issues Facing the Hispanic/Latino Community, Chicago, IL, May 4, 1992. *See also* Romagoza Testimony, *Hearing Transcript*, vol. 1, p. 409, and Galbis Testimony, *Hearing Transcript*, vol. 1, pp. 419-21. Dr. Romagoza suggests that the pattern of AIDS infection in the Latino community differs from that of AIDS nationwide.

[67] The rates, per thousand, are 8.6, 5.3, and 3.9 for Hispanics, blacks, and whites respectively. Giachello, "Critical Issues Facing Hispanics/Latinos."

[68] Ibid.

[69] Ibid.

[70] Romagoza Testimony, *Hearing Transcript*, vol. 1, p. 420.

[71] Ordonez Testimony, Joint Public Roundtable. Ms. Ordonez cited a new study conducted by the Boston University School of Public

significant bearing on transmission of the virus.[72] Therefore, to provide effective AIDS-related health care to Latinos, programs need to be tailored to the Latino community.

D.C. General Hospital, the Upper Cardozo Clinic, Alianza, the Clinica del Pueblo, Salud, Inc., Whitman Walker Clinic, and Andromeda offer HIV/AIDS-related services. Except for D.C. General Hospital, all receive funding from the Commission on Public Health's Office on AIDS Activities. Salud, Inc., and the Whitman Walker clinic also receive funds under the Ryan White Act.[73]

The nature and growth of the AIDS epidemic points to a need to develop HIV/AIDS educational and outreach programs tailored to the Latino community and to expand medical services to meet the growing number of Hispanics with this disease. However, Andromeda has the only program in the District that trains persons to address the cultural differences that may inadvertently contribute to the spread of HIV and AIDS among Latinos.[74] Furthermore, the Clinica del Pueblo has had an education program about AIDS for the past several years. Although it has expanded, the number of participants has reached the limit.[75] Finally, budget cuts are likely to reduce the funding these clinics currently receive, forcing them to cut back rather than expand HIV/AIDS services.

Substance Abuse Services

Drug and alcohol abuse are often coping mechanisms for stress. Latinos (and possibly other immigrants) face special stresses, such as family displacement and cultural and linguistic differences, that may contribute to increased substance abuse.[76] For Latinos in the District of Columbia, alcohol abuse appears currently to be a greater problem than drug abuse. According to Dr. Galbis, drinking is widely accepted and regarded as macho.[77]

The D.C. Latino Civil Rights Task Force charges that the facilities to treat drug and alcohol abuse in the Latino community are inadequate. Only one government alcohol treatment clinic (the Adams Mill Alcohol Treatment Center) and a few Latino community-based organizations (such as Andromeda) provide substance abuse treatment. The needs of the Latino population may already exceed the capacity of these treatment centers, yet the centers are facing severe budget cuts.[78]

In 1990 the Commission of Public Health's Alcohol and Drug Abuse Services Administration (ADASA) carried out the major portion of drug prevention initiatives in the District of Columbia in conjunction with 19 community-based organizations that it funds. Clinics or programs operated or contracted by ADASA that serve substantial numbers of Latinos include Andromeda, the Latin American Youth Center, the Adams Mill Alcohol Center, PARADE, and the Detoxification Center's alcohol program for inpatients.

Andromeda has a $281,460 5-year contract with ADASA for the treatment and prevention of drug and alcohol abuse. All of Andromeda's 414 clients during fiscal year 1991 were Latino.[79] Dr. Galbis expressed frustration at Andromeda's lack of funds to serve those who need substance abuse treatment. He complained of a lack of coordination between the District's justice system and community-based health centers. The justice system refers many clients to Andromeda, although Andromeda has no funding to serve them.[80] Statistics from the Commission of Public Health show that 23 percent of persons entering

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Health.

[72] Romagoza Testimony, *Hearing Transcript*, vol. 1, p. 420; Galbis Testimony, *Hearing Transcript*, vol. 1, p. 419.

[73] Ruiz Letter, Attachment 12.

[74] Galbis Testimony, *Hearing Transcript*, vol. 1, p. 419.

[75] Romagoza Testimony, *Hearing Transcript*, vol. 1, p. 420.

[76] *Latino Blueprint.*

[77] Galbis Testimony, *Hearing Transcript*, vol. 1, p. 429.

[78] *Latino Blueprint*, p. 65.

[79] Akhter Letter, Attachment B.2, Alcohol and Drug Abuse Services Administration.

[80] Galbis Testimony, *Hearing Transcript*, vol. 1, p. 412.

ADASA-funded treatment programs (including Andromeda's) were referred by the criminal justice system.[81]

Other programs serve smaller numbers of Latinos. During fiscal year 1991, the Latin American Youth Center had 60 patient visits, all of them from Latinos. Forty percent, or 79, of the patients visiting the Adams Mill Alcohol Center were Latino. One hundred and sixty patients served by PARADE were Latinos, although they were only 10 percent of all the patients. The Detoxification Center served 150 Latinos for alcohol abuse; they were 6 percent of the center's patients.[82]

Foreign Medical School Graduates as a Source of Latino or Bilingual Medical Personnel

In the face of the unmet need for bilingual medical personnel in the District of Columbia, the District government has done little to augment the pool of certified Spanish-speaking medical personnel. A potential pool of bilingual medical personnel exists, but they are foreign trained and need training and licensure in the United States.[83]

Gaining certification for foreign-trained medical personnel is a problem, not just in the District of Columbia but nationwide. According to one source, 8,000 such physicians have immigrated but find it impossible to practice medicine in the United States.[84] To be licensed to practice medicine in the United States, medical school graduates must meet the licensing requirements imposed by their States.

Graduates of foreign medical schools must first be certified by the Educational Commission for Foreign Medical Graduates. This commission requires immigrant doctors to learn English and pass an English-language-proficiency examination and a basic medical exam, the Foreign Medical Graduate Examination in Medical Sciences. Graduates of U.S. medical schools are not required to take these two exams.[85] Graduates of foreign medical schools are then required to pass the Federal Licensing Examination (FLEX). The FLEX is similar to the test of the National Board of Medical Examiners, which is required of graduates of U.S. medical schools. However, the former is taken at one sitting and the latter is taken in parts throughout the student's medical education.[86] Finally, all medical school graduates must compete for 2-year residencies or internships, although graduates of foreign medical schools may already have had years of practice in their home countries before immigrating to the United States.[87]

Immigrant doctors may have difficulty establishing their education and credentials from the country that they left and preparing for exams that entail full-time study when they are working to support themselves (and sometimes their families). A newspaper report described the plight of three Salvadoran doctors in the District of Columbia. One of them, Juan Romagoza, fled El Salvador in 1983. After arriving in the United States, he worked nights as a janitor and volunteered at a free health clinic (Clinica del Pueblo) for Spanish-speaking patients during the day. He became chief administrator of the clinic but made little progress toward obtaining his license to practice medicine. Other Salvadoran physicians have been unable to find work even remotely related to their training and have settled for menial jobs as part-time deliveryman, house cleaner, or babysitter. The economic problems of day-to-day living, lengthy test preparation, and often prohibitively expensive procedures for licensure force them away from dedicating themselves to getting a license, despite a critical need for Spanish-speaking doctors.[88]

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[81] *Indices 1991*, p. 262.

[82] Akhter Letter, Attachment B.2.

[83] Carlos Sanchez, "Lifework Was Left Behind Them," *Washington Post*, Mar. 9, 1992, p. D1 (herafter Sanchez, "Lifework"); Galbis Testimony, *Hearing Transcript*, vol. 1, p. 412.

[84] Sanchez, "Lifework." *See also* U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s* (hereafter *The Asian Report*) February 1992, pp. 145-48. This report describes similar difficulties among Asian Americans.

[85] Sanchez, "Lifework"; *The Asian Report*, pp. 145-48.

[86] Sanchez, "Lifework"; *The Asian Report*, pp. 145-48.

[87] Sanchez, "Lifework." Furthermore, most States require graduates of foreign medical schools to serve longer periods in their residencies than graduates of U.S. schools. *See The Asian Report*, pp. 145-48.

Local jurisdictions can help foreign-trained doctors become licensed health care professionals in exchange for serving the medically neglected Hispanic community. A State program in Florida has helped nearly 100 Hispanics and could serve as a model. The 1990 law establishing the program offers an alternative to taking the State exam: the foreign doctors may receive a $10,000 loan and take a class that qualifies them as physician's assistants. They still must complete a supervised 2-year residency in a university-sponsored clinic that serves Hispanic patients and pass the FLEX.[89]

The District's Department of Consumer and Regulatory Affairs recently drafted an amendment to the D.C. Municipal Regulations to change the licensure process. The amendment would eliminate the requirement for foreign-trained individuals to pass a national examination for certification to become licensed as physician assistants, allowing a District-sponsored examination to take its place. The amendment has the support of the Board of Medicine.[90]

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88 Sanchez, "Lifework."

89 Ibid.

90 Ruiz Letter, Oct. 27, 1992, Attachment, p. 7.

Chapter 9. Low-Income Housing

Inadequate housing is one of the major problems experienced by Latinos in the District of Columbia. According to the Latino Civil Rights Task Force, the lack of affordable housing was cited by 44 percent of Latinos in the Mount Pleasant-Adams Morgan area as the number one problem faced by the community.[1] The task force anticipates that budget cuts in housing programs will further exacerbate the community's situation.[2] Counsel for the task force summarized the housing problems unique to Latinos as follows:

> Although deteriorating housing is a problem experienced by numerous low-income tenants in D.C., the problem for Latinos is especially acute. First, because the D.C. government does not have Spanish-speaking personnel working in many of its agencies, Latinos who are not fluent in English often cannot utilize essential government services designed to remedy housing problems. Second, because many Latinos live in neighborhoods that have experienced significant gentrification in recent years, they often have landlords whose interest is in speculation, not in providing low-income housing. These landlords would prefer not to remedy structural defects for their low-income tenants because they intend to eventually get rid of their tenants. The D.C. government's Code eviction policy helps them to implement this strategy, allowing them to pay occasional minor fines rather than repair their buildings.
>
> Our study of Code evictions suggests that a high percentage of the victims of Code evictions are Latino. Of the 98 properties that we were able to identify in our study, Latino families were evicted from 24 of them. This level of victimization—nearly 25 percent—is much greater than the proportion of Latinos to the general population (10 percent).[3]

The Decline in the Availability of Affordable Housing in the District of Columbia

Over the past decade and a half, the District has experienced a decline in the availability of decent low-income housing. The Latino Civil Rights Task Force has emphasized that despite an official increase in the Latino population in Ward 1 from 6,000 to 14,000 between 1980 and 1990, only 754 additional housing units were available, resulting in the creation of "approximately one housing unit . . . for every ten Latinos that have entered Ward 1."[4] The neighborhoods of Mount Pleasant and Adams Morgan, which are in Ward 1, have experienced ongoing gentrification since at least the 1970s, resulting in the displacement of many low-income residents. Furthermore, some of the rental housing in these neighborhoods is among the oldest in the city and is in dilapidated, unsafe condition.

The budget crisis facing the District has reduced the amount of funding available for housing programs and services in the District of Columbia. During the 1980s, the Federal government cut District funds—from a community development block grant (CDBG) allocation of $33.9 million in 1979 to $15.6 million in 1991.As a result, the number of housing units receiving assistance in the District declined dramatically. Furthermore, public housing subsidies were cut, and the Tax Reform Act of 1986 made it less feasible for housing finance agencies to issue tax-exempt bonds. Because income and property taxes rose during the 1980s, the District of Columbia was able to fill the gap with additional revenues. But it has been unable to sustain that level of appropriations since 1990 because of the recession.[5]

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[1] D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action, Final Recommendations to the District of Columbia Government*, Oct. 1991, p. 29 (hereafter *Latino Blueprint*).

[2] Ibid.

[3] John Kostyack, Esq., Steptoe & Johnson, Attorneys for the D.C. Latino Civil Rights Task Force, Housing Committee, written testimony, (hereafter Kostyack Written Testimony), *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., Jan. 29-31, 1992, pp. 6-7 (hereafter *Hearing Transcript*).

[4] Ibid., *citing* District of Columbia, Office of Policy and Program Evaluation, *Indices: A Statistical Index to District of Columbia Services*, vol. 8 (Aug. 1991), (hereafter *Indices 1991*), p. 32.

As a consequence of the decline in affordable housing stock, as shown by a 1987 Urban Institute survey, one-quarter of District renters were spending more than 45 percent of their income on housing.[6] Fifty-six percent of District renters either had excessive rent burdens or lived in physically deficient or overcrowded housing.[7] The District's lack of affordable, decent housing, therefore, affects a large segment of its population, including many Latinos.

Although Latinos are underrepresented among persons with excessive rent burdens (in 1985 Latinos constituted only 1.4 percent of all renters paying more than 30 percent of their income for rent[8]), Latinos are the most likely of all population groups to live in doubled-up households, usually in crowded conditions.[9] Ward 1, where most of the District's Latinos live, is the District's most densely populated ward (66 residents per acre), and is over twice as dense as the next highest ward, Ward 6, which has 31 residents per acre.[10]

The District's Affordable Housing Strategy

The District has a maze of affordable housing programs and policies. They include assistance for tenants or home buyers and for developers building or renovating housing for low-income families, controls on the activities of owners and landlords, and housing codes to protect the health and safety of occupants. Several District agencies administer these programs and policies, often with the Federal Government playing a role, if only by providing funding. These agencies include: the Office of the Deputy Mayor for Economic Development, which oversees the Departments of Housing and Community Development, Public and Assisted Housing, and Consumer and Regulatory Affairs; the Department of Finance and Revenue; and the D.C. Housing Finance Agency.

Over the years, the District's lack of a comprehensive affordable housing policy appears to have contributed to its shortage of adequate affordable housing. One report concluded:

> The District government has traditionally played a significant and irreplaceable role in financing and regulating the creation of affordable housing. But, it has done so without *a clearly stated affordable housing policy that sets priorities, coordinates programs within and among agencies, improves public service, and provides a leadership agenda.* . . .[11]

Congress recently developed national housing legislation requiring local jurisdictions to establish an affordable housing policy as a precondition to Federal aid. The National Affordable Housing Act of 1990[12] instructs the U.S. Department of Housing and Urban Development to provide funding to local jurisdictions if they submit a comprehensive housing affordability strategy.[13] The strategy must project the jurisdiction's needs for housing for the ensuing 5-year period and for assistance for families with very low, low, and moderate incomes; the effect of public policies, particularly those of the jurisdiction, on the cost of housing or the incentives to develop, maintain, or improve affordable housing; and the amount and condition of public housing units and their needs for restoration and revitalization.[14] The jurisdiction must also provide citizens, public agencies, and other interested parties with an opportunity to express their views of the housing needs of the jurisdiction at one or more public hearings and to submit comments on the proposed housing strategy.[15]

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[5] *Effectiveness of Federal Assistance Programs in Meeting Fiscal Distress—Part II: Hearing Before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance and Urban Affairs*, 102d Cong., 1st Sess. 64-72 (1991) (hereafter *Effectiveness of Federal Assistance Programs*) (statement by the Honorable Frank Smith, Jr., Councilmember for Ward 1, District of Columbia).

[6] Margery A. Turner, *Housing Market Impacts of Rent Control: The Washington, D.C. Experience* (Washington, D.C.: The Urban Institute Press, 1990) (hereafter *Housing Market Impacts*), p. 29.

[7] Ibid.

[8] District of Columbia, Department of Housing and Community Development, *CHAS: Comprehensive Housing Affordability Strategy of the District of Columbia, (CHAS) 1992-1996*, (hereafter *CHAS 1992-1996*), Table V, p. 7, (i.e., 676 Latino units out of 47,055). But, the growth in the Latino population since 1985 and the generally recognized undercount of Latinos cast some doubt on this figure.

[9] Twenty-seven percent of the District's Hispanic-headed households were doubled up, in comparison to only 16 percent of black-headed households and 4 percent of white ones. District of Columbia, Office of the Mayor, Office of the Special Assistant for Human Resource Development, "Doubled-Up Households in the District of Columbia" (Feb. 1989).

[10] U.S. Commission on Civil Rights, *The District of Columbia: An Overview*, Staff Report (Jan. 1992), p. 20, *citing Indices, 1991*, p. 29.

[11] *CHAS 1992-1996*, Appendix II, "Summary of D.C. Home Report on Barriers" (emphasis in original).

[12] Cranston-Gonzalez Nat'l Affordable Housing Act, Pub. Law No. 101-625, 104 Stat. 4079 (1990), 42 U.S.C.A. § 12701 (West Supp. 1990).

Prompted by the availability of these Federal funds,[16] the District developed the Comprehensive Housing Affordability Strategy. At the heart of this affordable housing strategy were existing legislation, regulatory policies, and programs, causing it to be criticized by local housing activists as "a good catalogue of existing programs" that "falls short of a clear declaration of Mayor Sharon Pratt Dixon's housing policy." One activist stated, "This is not a strategy . . . It appears to be a justification for not pursuing strategies suggested by the community on the grounds that [the city's] existing programs already address problems."[17] The District government has indicated that it is close to issuing a new citywide housing policy that is designed for the remainder of the 1990s.[18]

Enforcement of the District's Housing Code

The District's Deputy Mayor for Economic Development testified that Ward 1, containing the Mount Pleasant and Adams Morgan communities, has some of the worst problems with housing code violations.[19] The Latino Civil Rights Task Force has complained that many rental units occupied by Latino families are in violation of the District's housing code.[20] The task force faults the Department of Consumer and Regulatory Affairs (DCRA) for failing to force landlords to bring unsafe housing units up to code, with the result that the housing units continue to deteriorate. Eventually their tenants become subject to forced evacuations because the units pose an imminent danger to their health and safety.[21]

The District's Civil Infractions Act grants DCRA the authority to protect public health and safety by inspecting or investigating complaints or suspected violations of regulations and levying fines or other administrative sanctions.[22] Building owners receive a registered notice that they must fix code violations and are given a period of 24 hours to 30 days to do so, depending on the gravity of the situation.[23]

At the Mount Pleasant hearing, Mario Rivera, program coordinator of Adelante Advocacy Center, Inc., a community-based organization that provides housing counseling to Latinos, charged that DCRA is not adequately enforcing housing codes:

> Many Latino families live in multi-family buildings with serious housing code violations. Many delinquent landlords are not paying their fines or making repairs. There is

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[13] *Id.* § 12705 & 12746(5).

[14] *Id.* § 12705(b).

[15] *Id.* § 12707(a)(2) & (3).

[16] *CHAS 1992-1996*, p. 1.

[17] Nell Henderson, "Dixon Wants Fast Approval of Housing Plan," *Washington Post*, Oct. 29, 1991, p. B-4.

[18] Vanessa Ruiz, Deputy Corporation Counsel, Legal Counsel Division, Government of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 27, 1992.

[19] Austin Penny, District of Columbia Deputy Mayor for Economic Development, testimony, *Mount Pleasant Hearing*, vol. 2, p. 437.

[20] *The Latino Blueprint*, p. 32.

[21] Kostyack Written Testimony, pp. 6-7.

[22] *See* Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Code Ann. § 6-2701 *et seq.* (1981).

[23] Edwards Testimony, *Hearing Transcript*, vol. 2, p. 458.

> also not enough funding for the 5-513 emergency repair program operated by the District of Columbia Department of Consumer and Regulatory Affairs to make repairs. Guidelines must be developed on ways to use this money more effectively. Aggressive enforcement can only pay off if there are funds available to make necessary repairs first and then attach liens against the property to cover the cost of repairs. Aggressive pursuit by the civil infraction unit at DCRA to get liens repaid, and pursuit by the Homestead Program to capture buildings that don't pay their liens. Under the Homestead law the city can acquire tax delinquent properties and in particular in the case of multi-family structures, sell the units to existing tenants.[24]

The Commission received further testimony that when the District closes down a building and evicts the tenants because of serious housing code violations, the landlord is simply asked to board up the building.[25] The tenants are permanently evicted from their homes, often at night, with little or no advance notice.[26]

Latino tenants and those who work in the low-income housing field maintain that evictions for housing code violations are common.[27] The District government does not keep records on the frequency of housing code evictions.[28] DCRA does not produce any routine reports on housing code violations, nor does it compile a breakdown of complaints by the type of code violation, disposition, fines assessed, or the percentage that came from Hispanic complainants.[29] Section 5-513(b)(4) of the D.C. code requires the District to prepare a report analyzing building code violations;[30] however, DCRA has neglected to prepare this report for several years because of organizational and system changes in the department.[31] A Latino Task Force study of building code violations confirmed that a significant number of Latinos are victims of evictions for housing code violations.

DCRA Director Edwards testified that a major evacuation occurs about twice a year, when code violations endanger tenants and the District cannot finance repairs.[32] During the 7 months that he had been in office, one building in Ward 1 had been evacuated.[33] The tenants were living among rats, roaches, dilapidated conditions, water problems, and serious fire and electrical hazards. Electrical extension cords were stretched from apartment to apartment, room to room, and hall to room. Because the conditions were hazardous and the tenants could not be evacuated immediately, the fire department established a 24-hour watch in front of the building until the information needed for relocation (household size and composition) could be obtained. Several departments of District government, the Office of Latino Affairs, and Adelante helped in the relocation. The process took nearly a week until the building was closed.[34]

In an examination of available District records, John Kostyack, an attorney with Steptoe and Johnson, the law firm representing the Housing Committee of the Latino Civil Rights Task Force, found that between October 1986 and June 1990, 151 families sought assistance from the District's Department of Housing and Community Development (DHCD) after being notified by DCRA that they would be evicted for code violations. Since many other tenants, especially Latinos, probably turned to nongovernment resources, such as families and neighborhood churches, to find replacement housing, he concludes that many more than 151 families were displaced by evictions for code violations during this 3 1/2 year period.[35]

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[24] Mario Rivera, Program Coordinator, Adelante Advocacy Center, Inc., written testimony, submitted to the *Mount Pleasant Hearing*, (hereafter Rivera Written Testimony), pp. 5-6.

[25] Kostyack Written Testimony, p. 2.

[26] Kostyack Written Testimony, p. 2.

[27] Kostyack Written Testimony.

[28] *See* Kostyack Written Testimony, p. 3.

[29] Aubrey H. Edwards, Director, D.C. Department of Consumer and Regulatory Affairs, testimony, *Hearing Transcript*, vol. 2, pp. 451-58.

[30] D.C. Code Ann. § 5-513(b)(4)(1990).

[31] Edwards Testimony, *Hearing Transcript*, vol. 2, pp. 462-63.

[32] Edwards Testimony, *Hearing Transcript*, vol. 2, p. 470.

[33] Ibid., pp. 470-71.

[34] Ibid., pp. 470-72.

Kostyack identified the addresses from which 98 of the 151 families had been evicted and located DCRA records for 45 of these properties. Examination of these records revealed that a substantial number of the 45 had been the subject of repeated property inspections before the evacuation. One hundred and eight housing deficiency notices were sent to the landlords for these 45 addresses, providing specified time periods to correct unsafe conditions. Only 10 of the deficiencies had been fixed, and half of those fixed required only minor expenditures.[36] Of the 98 properties identified, Latino families were evicted from 24—or nearly 25 percent.[37]

In written testimony submitted to the U.S. Commission on Civil Rights, Kostyack faulted the Civil Infractions Division of DCRA for taking no significant enforcement action to compel landlords to repair the properties from which the tenants were evicted. In a few instances, small fines were imposed and paid prior to evictions.[38] Moreover, DHCD records showed that the evicted tenants were typically relocated into apartments that also had serious housing code violations. Thus, the families were in jeopardy again of being evicted for code violations.[39]

The language barrier exacerbates the problems Latinos have in getting violations of the housing code corrected. Without Spanish-speaking personnel in many D.C. government agencies, Latinos who are not fluent in English are unable to use government services that might remedy housing problems.[40] Moreover, the undocumented status of many Latinos makes them particularly vulnerable to landlords who refuse to correct housing code violations. Those who are undocumented are often afraid to complain about housing code violations for fear that their landlords will report them to the Immigration and Naturalization Service.

One initiative has grown out of the District's affordable housing strategy and recommendations of the Latino Civil Rights Task Force and others. The District plans to increase coordination among the District's various departments that deal with housing by creating a task force from DCRA, DHCD, the Department of Finance and Revenue, and the Corporation Counsel. According to Austin Penny, Deputy Mayor for Economic Development, the task force will meet regularly to identify problem properties—properties that are well-known to have serious and/or chronic housing code violations. It will then develop a coherent strategy for dealing with each of these properties on an expedited basis.[41]

Latino Access to Housing Services

The District's provision of housing assistance and public housing to its residents has been widely criticized as inefficient. Congress has been investigating these general issues over the past several months.[42] Examples of inept management abound: a 19 percent vacancy rate in its 11,473 public housing units despite a 12,000 applicant waiting list; supplies worth $20,000 stolen weekly from the D.C. public housing inventory;[43] 463 maintenance employees and "nearly one boss for each one of them," when Federal guidelines would suggest 295 maintenance workers for a city like the District of Columbia;[44] and a recent audit by the U.S. Department of Housing and Urban Development which recommended that the D.C. Department of Public and Assisted Housing repay $1.3 million to HUD and document how an additional $6.1 million had been spent.[45]

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[35] Kostyack Written Testimony, p. 3.

[36] Ibid., p. 4.

[37] Ibid., pp. 6-7.

[38] Ibid., p. 5.

[39] Ibid., p. 4.

[40] Ibid., p. 6.

[41] Penny Testimony, *Hearing Transcript*, vol. 2, pp. 437-38.

[42] Rep. Tom Lantos, Chairman, Employment and Housing Subcommittee, U.S. House of Representatives, "Opening Statement" to a hearing on waste and mismanagement of public housing funds and the conditions in public housing, July 21, 1992 (hereafter "Opening Statement").

[43] Ibid.

According to the Latino Civil Rights Task Force, "the D.C. Latino population has not received an equitable share of City housing services."[46] Mario Rivera, program coordinator for Adelante Advocacy Center, testified:

> We are extremely concerned that [the] D.C. Latino population has not gotten its fair share of city programs and services, and there are not enough bilingual city staff and materials to serve the Latino community as needed. [B]ilingual staff is absolutely critical in the following departments: Staff who answer the "DC Help" phone line, the Mayor's Command Center, the Complaint Center and the Office of Emergency Preparedness, and all other emergency programs and intake centers. There also needs to be a translator/interpreter service at the Rental Accommodations Commission, a Hispanic liaison at the Department of Public and Assisted Housing, as well as bilingual housing inspectors at DCRA, and staff at the DHS Office of Emergency Shelters.
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> All D.C. housing programs must incorporate bilingual staff, translation of signs and information materials into Spanish, and outreach to let low-income Latino residents know that they are eligible for and welcome to apply for services offered by all agencies.[47]

Latinos are generally underrepresented on District waiting lists for housing assistance. For instance, the District's tenant assistance program (TAP) has 12,393 families on the waiting list—185 of them (1.5 percent) Hispanic.[48] Similarly small numbers of Latinos are on the waiting lists for federally funded housing assistance. The public housing program has 10,485 families on its waiting list, and 175 of them (1.7 percent) are Hispanic; and the section 8 program has 12,153 families on its waiting list, 198 (1.6 percent) of whom are Hispanic.[49] Councilmember Frank Smith, Jr., testified before the House Subcommitee on Housing and Community Development that because of "the long waiting lists for section 8 and public housing, Latino families are effectively shut out of these Federal housing programs."

> Currently, the average family in the District waits two to five years before receiving public housing or section 8 assistance. Each month, approximately 12 Section 8 certificates or vouchers become available and 90 non-senior public housing units become available. Seventy-five percent of these units are currently being allocated to homeless families as a result of the priority waiting list.[50]

As a result, "[o]ut of the 9,684 public housing households, only 18 are Latino, and out of the 5,100 Section 8 certificates and vouchers, only 80 are Latino."[51]

Language is a barrier because DPAH does not have bilingual brochures, posted signs or adequate bilingual staff.[52] All applicants for public housing, section 8, and the tenant assistance program must go in person to the Department of Public and Assisted Housing's Client Service Center at 1133 N. Capitol Street, NE.[53] Blank applications cannot be obtained in advance through the mail except for persons who are disabled and elderly. The application center has no Spanish-speaking employees. No one at the switchboard is bilingual. If a Spanish-speaking person calls on the phone or comes in, the Client Service Center personnel must run to another unit to get one of the few program employees who speaks Spanish to come and interpret.[54] DPAH's director stated that he hoped to hire more bilingual staff but could not do so until the District-imposed hiring freeze was removed and the new budget approved.[55] Subsequent to the Commission's hearing in January 1992, the Department designated a Hispanic coordinator. Nevertheless, the success of this new position in overcoming these barriers remains doubtful in light of the past unsuccess of the Hispanic Coordinator positions in other District agencies.[56]

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[44] Editorial, "D.C. Housing, Still Distressed," *Washington Post*, July 28, 1992.

[45] Ruben Castaneda, "HUD Calls D.C. Housing Mismanaged," *Washington Post*, Oct. 6, 1992, p. A-1.

[46] *See The Latino Blueprint*, p. 33.

[47] Rivera Written Testimony, pp. 3-4; *see also* Diaz Testimony, *Mount Pleasant Hearing*, vol. 2, p. 402.

[48] Raymond Price, Director, D.C. Department of Public and Assisted Housing, testimony, *Hearing Transcript*, vol. 2, pp. 444-45. Mr. Price indicated that the Hispanic families were identified through surnames, and provide an estimate but not an accurate count.

[49] Ibid., p. 444. October 1991 figures show that in Ward 1, about 6 percent of those on the waiting lists were Latinos. District of Columbia, Department of Public and Assisted Housing, "Summary of Waiting Lists as of 10/31/91 by Race/Ward," Nov. 8, 1991.

[50] *Effectiveness of Federal Assistance Programs in Meeting Fiscal Distress—Part II: Hearing Before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance and Urban Affairs*, 102d Cong., 1st Sess. 68 (1991) (statement by the Honorable Frank Smith, Jr., Councilmember for Ward 1, District of Columbia).

[51] Ibid., p. 69.

[52] Price Testimony, *Hearing Transcript*, vol. 2, pp. 446, 449.

The Latino Civil Rights Task Force has alleged that confusion about the District's policy with regard to housing services for undocumented immigrants has caused District government employees to require Immigration and Naturalization documentation from Latino applicants for housing assistance, even when undocumented aliens are eligible for such assistance.[57] Confusion exists within the Department of Public and Assisted Housing (DPAH) with respect to the eligibility criteria for the housing programs. For instance, the DPAH requires social security numbers from all its clientele, including recipients of the tenant assistance program (TAP), a program funded solely by District of Columbia funds. This conflicts with the mayoral order which instructed that D.C. residents will be eligible for all programs funded solely by District funds, regardless of citizenship status.[58]

Community-Based Organizations

Community-based organizations conduct many activities that help Latinos obtain housing services, take advantage of pro-tenant laws and programs to purchase their buildings, and ensure that code violations are corrected. These services are vital to Latinos who often are limited English proficient and do not understand the maze of housing laws and programs in the District of Columbia. Yet, community-based organizations are experiencing budget cuts that are severely curtailing their ability to provide assistance in the housing arena to Latinos. One community activist, Benito Diaz, expressed concern that the D.C. housing budget had been disproportionately cut both in Federal dollars received through community development block grants and in the D.C. appropriated budget. These cuts diminish the housing services that help tenants take advantage of pro-tenant laws and programs to purchase their buildings. Without the aid of community-based groups, Diaz stated that tenants are displaced, and the displacements occur repeatedly.[59]

Enforcement of the Fair Housing Laws

Housing discrimination against Latinos in the District of Columbia is prevalent. During 1988 and 1989, the Fair Housing Council of Greater Washing-

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[53] Ibid., p. 449.

[54] Price Testimony, *Hearing Transcript*, vol. 2, p. 449.

[55] Ibid., p. 450. Mr. Price also commented that the agency does not have an equal opportunity officer to increase the department's awareness of civil rights issues and ensure compliance with Federal regulations. He stated that he planned to hire one, and expressed the hope that person will also improve outreach.
In other comments, Mr. Price described how he is targeting the Hispanic community with outreach for minority contracting, specifically construction contracting to repair the substantial number of recently identified vacant housing units. In the last 12 months, the department had issued 138 contracts, 12 of them (or 9 percent) to Hispanics. Six percent of the $18 million expended on those contracts went to Hispanics. At the time of the hearing, his department had recently televised a seminar explaining what contracts were available and how minority contractors could apply for them. About 100 minority and women contractors attended, approximately 25 percent of whom were Hispanic.

[56] *See generally* Chapter 5 of this report discussing Latino employment issues.

[57] *See Latino Blueprint*, p. 33.

[58] Government of the District of Columbia, Mayor's Order 86-91 (June 9, 1986).

[59] Benito Diaz, Organizer, Washington Inner-City Self-Help, testimony, *Hearing Transcript*, vol. 2, pp. 418-19. Adelante Advocate Center, which provides housing assistance to the Latino community, experienced a 27.4 percent reduction in its budget from the Department of Housing and Community Development. *See* Rivera Written Testimony, *Hearing Transcript*, p. 2.

ton conducted a pilot study testing for housing discrimination against Latinos in District of Columbia apartment complexes using matched Latino and Anglo testers.[60] The study found that Latinos were discriminated against more than 70 percent of the time.[61] Latinos were told that no apartments were available at a particular complex when several were. They were shown dilapidated apartments when their Anglo counterparts were shown nicer units. Information about rent specials was provided to Anglo testers but not to the Latino testers. When they asked about recreational facilities, Latino testers were directed to look for housing in the suburbs, while Anglo testers were given accurate information.[62]

In January 1992, the council began another study of the treatment of Latino apartment seekers in the Washington metropolitan area, including Washington, D.C., northern Virginia, Prince George's County, and Montgomery County. Trained Latinos with accents and Anglos made a series of 80 telephone tests responding to printed advertisements of available moderate-income rental units. The Latino and Anglo testers used the same script, with similar incomes, employment, and family compositions, to elicit information from the housing providers. Thus, any difference in treatment can be attributed to the rental agent's subjective reaction to the Latino accent.[63]

The council's preliminary results reveal the following differences between the treatment of Latino and Anglo testers: Latinos were given less information, were more likely to be questioned about family composition, and were warned about barriers such as income requirements and application procedures; Anglos were told about rent specials and discounts and more desirable units at other locations. In these brief phone inquiries, Latino testers were treated less favorably than Anglos 39 percent of the time and more favorably only 19 percent of the time.[64] In 42 percent of the tests, Latinos and Anglos received identical treatment. At least one authority believes disparate treatment is much greater when Latino homeseekers appear at the sites of apartment complexes.[65] Ms. Weiss emphasized:

> Keep in mind, however, that these . . . were merely requests for information over the phone. Just by making brief inquiries, a minute or two, our Latino testers encounter significant levels of inferior treatment—very significant.
>
> . . .
>
> We believe that this is just the tip of the iceberg. We can expect the levels of disparate treatment that occur when Latino homeseekers appear at the sites of apartment complexes and express genuine concern to the agents that they are interested in renting apartments to be significant higher levels of disparate treatment.[66]

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[60] Fair Housing Council of Greater Washington, "Pilot Study to Test for Discrimination in the Rental Housing Market Against Spanish Speaking Residents of Washington, D.C." (hereafter *Pilot Study*). The Fair Housing Council of Greater Washington educates the public about housing discrimination; assists victims of housing discrimination whether by rental agencies, sales persons, or mortgage lenders; monitors the levels of discrimination in the Metropolitan area; and seeks to promote the full enforcement of fair housing laws by private citizens and government agencies. *See* Susan Weiss, Executive Director, Fair Housing Council of Greater Washington, testimony, *Hearing Transcript*, vol. 2, pp. 406-415.

[61] *Pilot Study*, p. 1.

[62] Weiss Testimony, *Hearing Transcript*, vol. 2, p. 408.

[63] Ibid., vol. 2, pp. 408-09.

[64] Ibid., pp. 409-10.

[65] Ibid., p. 410.
Also, the U.S. Department of Housing and Urban Development recently studied housing discrimination nationally. In 13 cities it found that Hispanic renters were treated less favorably than whites 43 percent of the time; Hispanic homebuyers were treated less favorably 45 percent of the time. In the District of Columbia, the study measured discrimination against only blacks, not Hispanics. (*See* Margery Austin Turner, Raymond J. Struyk, and John Yinger, *Housing Discrimination Study: Synthesis* (Washington, D.C., U.S. Department of Housing and Urban Development, Aug. 1991); and John Yinger, *Housing Discrimination Study: Incidence of Discrimination and Variations in Discrimination Behavior* (Washington, D.C., U.S. Department of Housing and Urban Development, Oct. 1991.)

[66] Weiss Testimony, *Hearing Transcript*, vol. 2, p. 410.

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Chapter 10. Educational Opportunity

In the wake of the Mount Pleasant disturbance, the District of Columbia's Latino Civil Rights Task Force charged that the District has provided inadequate educational services to Latino language-minority students. Specifically, the Task Force charged that:

> 1) Due to a lack of policies regarding the education of language minority students and insufficient bilingual personnel, many Latino and other language minority students enrolled in D.C. Public Schools were not receiving adequate services.[1]
>
> 2) The civil rights of students had been consistently violated by physical abuse and the lack of services [in schools];[2]
>
> 3) The University of the District of Columbia discriminated against and had failed to serve adequately the District's Latino population.[3]

The District of Columbia public schools (DCPS) are struggling to overcome the effects of years of mismanagement and current budget cuts. In 1989 a District of Columbia Committee on Public Education (COPE) report evaluating District schools found low student achievement, a bloated bureaucracy, and limited professional opportunities for teachers.[4] The report made recommendations for systemwide reform, but little progress had been made towards implementing these recommendations when COPE issued a followup report in 1992.[5]

These problems have affected educational opportunities for all District youngsters. However, Latino children in the District face special barriers to educational opportunity. Until recently, the schools have failed to provide minimally acceptable programs for limited-English-proficient students. Out of compliance for years with Federal regulations pertaining to the education of limited-English-proficient youngsters, DCPS has in the past 3 years made strides towards correcting the deficiencies. By and large, schools have failed to reach out to Latino youngsters and their parents to help them navigate the unfamiliar ways of American school systems. Hispanic youngsters have the highest high school dropout rate of any group in the District, and they are underrepresented at the District's only public university, the University of the District of Columbia.

Barriers to Educational Opportunity Confronting Latino Students

The DCPS student population is 96 percent minority, with black children making up 90 percent of the total student body. However, Hispanic enrollment in the District of Columbia schools has increased markedly in recent years, as a stream of immigrant families has arrived from Latin America, especially from El Salvador. In 1986 Hispanic students represented 3.7 percent of the total DCPS student body, but by 1990 the Hispanic percentage had increased to 5.2 percent.[6]

Concomitantly, the number of language-minority students registered with DCPS also increased. The number of Spanish-speaking students in District public schools grew by 373 percent between 1980 and 1989[7] and almost doubled between 1983 and 1988.[8] Approximately 3,700 are presently receiving bilingual or English as a second language (ESL) instruction.[9] Roughly 57 percent of language-minority students in the District of Columbia are from families that speak Spanish.[10] Thirty percent of language-minority students are from El Salvador alone, and another 6 percent are from other Central American countries.[11]

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[1] D.C. Latino Civil Rights Task Force, *The Latino Blueprint for Action*, Final Recommendations to the District of Columbia Government (October 1991), p. 51. (Hereafter cited as *Latino Blueprint*).

[2] Ibid.

[3] Ibid., p. 53.

[4] District of Columbia Committee on Public Education, *Our Children, Our Future: Revitalizing the District of Columbia Public Schools* (Washington, D.C., June 1989), p. 107.

[5] District of Columbia Committee on Public Education, *A Time To Act*, February 1992, p. 3.

[6] Franklin L. Smith, Superintendent of Schools, District of Columbia, *A Five Year Statistical Glance at D.C. Public Schools: School Years 1986-87 Through 1990-91*, November 1991, p. 5 (hereafter *A Statistical Glance at D.C. Public Schools*).

Limited English proficiency is a major barrier to educational opportunity for most Latino students in the District of Columbia. Roughly one-quarter of language-minority students enrolled in District of Columbia schools know no English at all, and one-half of the students have a command of English that is "fair" or below. Only one-quarter are deemed fluent English speakers.[12]

In addition to limited proficiency in English, however, many Latino students in DCPS schools, like Latino students across the Nation, confront additional barriers that prevent them from taking full advantage of the educational opportunities typically offered in American schools. A recent national study of immigrant students in U.S. public schools identified several other major barriers confronting young immigrants "as they struggle to make the transition to life in the United States—a struggle that often acts to transform their unique strengths into vulnerabilities which threaten their successful education."[13]

First, the study found that cultural differences often pose barriers to immigrant students who are attempting to adapt to their new environment, but who lack the understanding of their teachers, other school officials, and their fellow students. With respect to Salvadorans, the study observed:

> The cultural patterns of Salvadorans and Central Americans in general are very different from the cultural patterns of this country . . . for example, cooperative learning is very essential for Central Americans. Cooperation and collectivity are always regarded as very essential values, while in this country what is valued is individualism and competition.[14]

Furthermore:

> Another important aspect . . . about the Central American community is that after decades and decades of poverty, people have come to think that going to school is not really important in life. And when they arrive in the United States, that takes time to change.[15]

Second, the children of immigrants often face greater responsibilities at home than the typical student because they learn English and the workings of American society more quickly than their parents. They are given the role of go-betweens, who bridge the gap between their parents and the society at large, often serving as translators for their parents in their dealings with the outside world. The study found that 69 percent of immigrant Hispanic students performed this role for their family.[16]

Third, many immigrant children from Central America have suffered the trauma of living in and escaping from war-torn countries, and now have problems focusing on school:

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[7] District of Columbia, Office on Latino Affairs, "The Latino Community: The District of Columbia Experience," p. 1.

[8] Superintendent's Task Force on Bilingual Education, *A Comprehensive Plan for Educating Language Minority Students in the District of Columbia Public Schools,* October 1989, vol. 2, table 1, p. 120 (hereafter *A Comprehensive Plan*).

[9] Elena Izquierdo, Director, Language Minority Affairs Branch, D.C. Public Schools, testimony, *Hearing Before the U.S. Commission on Civil Rights,* Washington, D.C., Jan. 29-31, 1992, vol. 3, p. 193 (hereafter *Hearing Transcript*).

[10] *A Comprehensive Plan,* vol. 2, table 5, p. 131.

[11] Ibid., pp. 133-35.

[12] Ibid., table 12, p. 154.

[13] Joan McCarty and John Willshire Carrera, *New Voices: Immigrant Students in U.S. Public Schools* (Boston, MA: National Coalition of Advocates for Students, 1988), p. 16.

[14] Ibid, p. 19, quoting Carlos Cordova, San Francisco University.

[15] Ibid., p. 20, quoting Oscar Cachon, National Co-Coordinator, Comite El Salvador.

[16] Ibid., p. 21.

> There are countless, countless situations where children . . . were in the classroom where their teacher was killed by armed people. . . . And that is something that definitely affects kids' performance and the overall ability for them to adapt into the school system.[17]

> Some were directly victimized in the form of severe beatings, gunshot wounds, rape, and torture. Another high risk category was that of children or adolescents who helplessly witnessed . . . an act of violence against other loved ones . . . random shootings, skirmishes, aerial bombardments, and other war related acts of violence were commonplace in the lives of these youngsters.[18]

Entering the U.S. often involved further trauma for immigrant children. A child psychiatrist who treats Central American children related "'horror tales of crossing the U.S./Mexican border'" he had heard from his patients.[19]

Fourth, coming to this country often means painful family separations for Latino immigrant children, some of whom lost close relatives in war-related violence. Other families have only come to the United States two or three at a time and have left behind family members until they are able to bring them. As an example:

> The father [of a Salvadoran family] came alone first. Two years later, the mother followed with her son. The two oldest daughters, aged 17 and 18, arrived several months later. Finally, the two youngest children, girls aged 9 and 13 who had been living with an aunt in El Salvador, joined the rest of the family.[20]

Fifth, immigrants often face enormous economic hardships upon their arrival in the United States. Most come with no wealth, do not have the education and training that enable them to find good jobs in this country, and face the additional constraint of limited English proficiency. They live in poor housing conditions and have inadequate health care. The school-aged children of immigrants are often forced to take after-school jobs to help support their families. Such conditions are not conducive to success in school.[21]

Finally, many Latino children are undocumented. They and their parents face the constant fear of deportation that causes them to draw back from interactions with authorities, including school officials:

> This fear is expressed in a reluctance to interact with school officials, to receive recognition, or to "get into trouble" and call unwarranted attention to [themselves] which may lead to discovery of [their] illegal residency status. Such a fear can poison teacher student relationships. Teachers may feel the immigrant child is not "trying," or comes from a family that is not interested.[22]

> The persistence of depression and anxiety in these children is due to the peculiar situation of the Central American immigrant, which is the condition of being illegal. Which means that they could be identified, or they could be captured and they could be sent back to their native countries where they will find again the same condition[s] of violence and repression.[23]

Witnesses at the Mount Pleasant hearing confirmed that Latino children in the District of Columbia face these same barriers. Elena Izquierdo, director of the DCPS Language Minority Affairs Branch, stated:

> [w]hen you think about the kind of population that is coming, Central American especially, populations that have very little if any education, there are no concepts developed, they have no cognitive skills, and then on top of that, you want them to learn a second language in a classroom. That's extremely difficult to do, along with the cultural and self-esteem and the acculturation process. It is almost impossible to ask a child to succeed.[24]

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[17] Ibid, p. 22, quoting Oscar Cachon.

[18] Ibid., pp. 22-23, quoting William Arroyo, Child Psychiatrist, Los Angeles Unified School District, speaking of Central American children.

[19] Ibid.

[20] Ibid, p. 24.

[21] Ibid., pp. 26-29.

[22] Ibid., p. 31, quoting Albert Cortez, IDRA, San Antonio, TX.

[23] Ibid., p. 32, quoting Pedro Rodriguez, Medical Director, James Weldon Johnson Counseling Center, New York.

Dr. Fernandez-Zayas, State director of Bilingual Education, added:

> From 1981 to the present came a tremendous influx of new students from El Salvador due to the war in [that country]. . . . We were overwhelmed by . . . children with multiple needs, not just in the area of being educated, but also adjusting to peace. Many children came from rural areas and they had to come to an urban area. Children might have been 14 years old and never been to school or just to the second grade. So we had that tremendous problem in front of us.[25]

Based on his study of Latino students who were attending the Multicultural Intern Program (MCIP, now Bell Multicultural High School) in the 1980s, Dr. Timothy Ready observed:

> [M]ost of the kids . . . were living in poverty. . . . Even while they were attending high school, virtually all of the students were employed. Many were working full-time while they were attending MCIP, getting out of school at 3 o'clock, starting work at 3:30, working until midnight, and going back to school.[26]

He concluded that:

> [i]mmigration problems, cultural shock, acute economic need, language barriers, and family tensions associated with the reconfiguration of families during migration were among the most serious problems experienced after arriving in [Washington D.C.].[27]

DCPS Bilingual/ESL Education Programs

The District's Latino immigrant students' access to education, and perhaps ultimately their chances of economic success in the United States, depend on how DCPS is addressing the rapid influx of Latino immigrant children into the school district. Yet it is only within the past 3 years that DCPS has made a systematic effort to provide adequate programs for limited-English-proficient (LEP) children.

Under Title VI[28] of the Civil Rights Act of 1964, DCPS is obligated to provide LEP children with equal access to education. In 1974 the U.S. Supreme Court ruled in the landmark case of *Lau v. Nichols*[29] that school districts have the responsibility of taking affirmative steps to "to rectify the language deficiency in order to open" programs to LEP children and ensure that limited-English-proficient children were afforded equal educational opportunity.[30] Enforcement of Title VI under *Lau*, including the task of adopting relevant Federal regulations and guidelines pertaining to equal educational opportunity for language-minority students, is the responsibility of the Office for Civil Rights (OCR) in the U.S. Department of Education.[31] In determining whether or not a school district is in compliance with Title VI under *Lau*, OCR looks to whether the school district has implemented an educationally sound plan for providing educational opportunity to LEP students and is

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[24] Izquierdo Testimony, *Hearing Transcript*, vol. 3, p. 213.

[25] Marcelo Fernandez-Zayas, State Director of Bilingual Education, D.C. Public Schools, testimony, *Hearing Transcript*, vol. 3, p. 200-1.

[26] Timothy Ready, author of *Latino Immigrant Youth: Passages from Youth to Adulthood*, testimony, *Hearing Transcript*, vol. 3, pp. 145-46.

[27] Timothy Ready, "Washington Latinos at the Crossroads: Passages from Adolescence to Adulthood," written testimony submitted at the *Mount Pleasant Hearing*, Jan. 31, 1992, p. 2.

[28] 42 U.S.C. § 2000d *et seq.* 1988.

[29] 414 U.S. 563 (1974).

[30] *Id.* at 570, *quoting* 45 C.F.R. §80.3 *et seq* (Stewart, J., concurring).
Congress also took an interest in providing relief. Under the Equal Education Opportunity Act (EEOA) of 1974, Congress added a statutory basis for protecting the equal educational opportunity rights of LEP students. The act declares that:
"No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."
20 U.S.C. §1703.

[31] *See generally*, 34 C.F.R. § 100.1 et seq. When *Lau* was decided the Department of Health, Education and Welfare had jurisdiction over enforcement of Title VI.

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periodically evaluating its plan to ensure its effectiveness.[32]

The District's Bilingual/ESL Programs

As the number of Latino and other language minority students in District schools multiplied, the need to provide programs to give them access to education became apparent. Several years ago, DCPS came under fire by Latino community groups, who maintained that it was not adequately serving the needs of language-minority students and who were opposed to a reorganization plan being proposed at that time by then Superintendent Andrew Jenkins.[33]

Superintendent's Task Force on Bilingual Education. In response to that protest, Superintendent Jenkins convened the Superintendent's Task Force on Bilingual Education to:

> - identify and report the problems and issues affecting the education of language minority students in the District of Columbia Public Schools.

and to:

> - develop a comprehensive plan with specific recommendations for the improvement of the educational services to language minority students in the District's public schools.[34]

In its October 1989 report, the bilingual education task force noted that DCPS had received national recognition for a school that effectively served language-minority students, Oyster Bilingual Elementary School, and for its language education programs at Gordon Adult Education Center (now the Carlos Rosario Adult Education Center); and it commended DCPS for running the Bell Multicultural High School.[35] However, the report found that the system as a whole had no coherent strategy for meeting the needs of language-minority and limited-English-proficient students.

The report identified a large number of areas in which DCPS services to language-minority students could be improved. Several specific problems noted in the report were:

- The District of Columbia Public Schools does not have any mandate, or set of policies and regulations, providing equal educational opportunities to language minority students. In effect, DCPS cannot demonstrate that it has taken appropriate action to overcome language barriers that impede equal participation by students in its instructional program. . . .[36]

- DCPS does not have a district-wide philosophy and mission statement for educational services to language minority students.[37]

- DCPS has no procedure for identifying or classifying all students according to primary or home language or for identifying language minority students who are also limited English proficient. Lacking this it is unable to provide any type of data on limited-English-proficient students from the school system's data bases regarding classification, identification, registration, assessment, placement, exit, evaluation, follow-up, and special education services.[38]

- DCPS does not provide an adequate program of educational services to language-minority students.[39]

- The DCPS curriculum does not reflect the educational needs of language-minority students.[40]

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[32] *See* U.S. Department of Education, *Policy Update on School's Obligations Toward National Origin Minority Students With Limited English Proficiency (LEP)*, Sep. 27, 1991, pp. 2-3.

[33] Rene Sanchez, "D.C. Bilingual Education Compromise Struck; Jenkins, Hispanics Agree to Outside Study Before System Is Set Up," *Washington Post*, Dec. 10, 1988, Final Edition, p. B8; Rene Sanchez, "Hispanic Leaders Vent Anger at Jenkins; Superintendent Accused of Hiding Plans for Bilingual Education," *Washington Post*, Nov. 17, 1988, Final Edition, p. D3.

[34] *A Comprehensive Plan*, vol. 1, p. 1.

[35] Ibid., p. 28.

[36] Ibid., p. 8.

[37] Ibid., p. 9.

[38] Ibid.

[39] Ibid., p. 11.

> - DCPS does not have a coordinated staff development system for general curriculum teachers . . . or for bilingual/ESL teachers . . . or for principals [to train them in how to serve the needs of linguistically and culturally diverse students.] Nor does DCPS have an adequate staff recruitment system for the needed personnel in programs serving language minority and limited English-proficient students.[41]
>
> - The current DCPS system of accountability and responsibility does not ensure that the educational needs of language minority students are met by the schools of the district.[42]
>
> - DCPS does not have any system for on-going program monitoring and longitudinal evaluation of language minority students.[43]
>
> - DCPS does not have an adequate system for communicating with language minority parents and communities and for fostering their participation in schools.[44]

Moreover, the bilingual education task force found that the ratio of bilingual/ESL teachers to LEP students was:

> clearly out of compliance with federal requirements. Many more specialized staff for language minority students need to be hired. A more typical ratio for most school districts is 10-20 language minority students for each bilingual or ESL teacher.[45]

The report outlined a comprehensive plan to help the District serve the needs of its language-minority students and made a number of recommendations for reforming DCPS policies and procedures to improve the quality of education provided to language-minority students.

The District's Corrective Action Plan (CAP) for Improving Bilingual/ESL Education. Three years after publication of the bilingual education task force report, DCPS has made considerable progress towards implementing its recommendations. Based on recommendations in the bilingual education task force report, the Language Minority Affairs Branch of DCPS has begun to implement a corrective action plan (CAP) for bilingual education. To rectify DCPS' failure to have a "procedure for identifying or classifying all students according to primary or home language," the first phase of the CAP involved administering a home language survey to all District students. The survey is available in six languages.[46] The survey asks parents whether a "language other than English" is spoken in the home. As of July 1992, 75 percent of the surveys had been completed and returned to DCPS, and, based on the completed surveys, the District had identified 10,549 language-minority students.[47]

In the second phase of the CAP, the branch began to administer the Language Assessment Scales (LAS) test to all students who had been identified by the home language survey as being language-minority students. The branch is using LAS to determine each student's level of proficiency in the English language and whether or not the student is in need of bilingual or ESL instruction.[48] As of October 1992, the District had identified approximately 4,000 limited-English-proficient students, most of whom were Spanish speakers.

Once students have been identified as LEP, the branch is planning to follow their progress through

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[40] Ibid., p. 12.

[41] Ibid., p. 13.

[42] Ibid., p. 14.

[43] Ibid., p. 18.

[44] Ibid., p. 19.

[45] Ibid., vol. 2, p. 155.

[46] These are: Amharic, Arabic, Chinese, English, Spanish, and Vietnamese. District of Columbia Public Schools, Special Programs and Alternative Education, Language Minority Affairs Branch, "Procedures for the Identification, Assessment, and Placement of Language Minority Students," p. 2.

[47] District of Columbia Public Schools, Language Minority Affairs Branch, "Home Language Survey Summary," attachment to "Home Language Survey Statistics," July 23, 1992.

[48] Ibid.

District schools using the LASbase, "a database designed to collect identification, assessment, and placement information on limited-English-proficient students within the District of Columbia Public Schools."[49]

Other recent efforts undertaken by the branch include the administration of a teacher retooling survey to determine which teachers are interested in bilingual training and developing a curriculum for language-minority students. Based on the teacher retooling survey, 35 teachers have been enrolled in classes at George Washington University to become certified in ESL.[50] Between 1990 and 1992, the number of schools with bilingual/ESL programs increased from 45 to 72, and the number of bilingual/ESL teachers increased from 147 to 193.[51] The branch also began implementing programs to monitor, provide professional development to, and to place the District's bilingual/ESL instructional staff; to provide multicultural sensitivity training for staff throughout DCPS; and to develop a bilingual/ESL curriculum.[52]

Current Status of DCPS Bilingual/ESL Programs. Although DCPS has taken some major steps towards meeting the needs of language-minority students since the 1989 release of the bilingual education task force report, DCPS has not yet adopted a comprehensive policy towards the education of language-minority students.[53] Meanwhile, according to a report prepared for the Latino Civil Rights Task Force, schools are not given specific guidelines on how to address the needs of language-minority students, leaving "principals, administrators and other personnel . . . to create their own *ad hoc* responses to the needs of language minority students."[54] Therefore, student access to programs for language-minority students "depends on the preferences of individual school principals, and thus, some students may be excluded from the programs that do exist."[55]

With an identified limited-English-proficient student population of approximately 4,000 and 193 bilingual/ESL teachers, DCPS has achieved a student-to-teacher ratio of roughly 20:1, which is within the bounds deemed acceptable by the Superintendent's Task Force on Bilingual Education.[56] Nevertheless, according to data provided to the Commission by the Superintendent of Schools in October 1992, as of March 1992, 13 District schools had LEP-student-to-ESL-teacher ratios above 30:1, and 1 has a ratio as high as 48:1.[57]

Several concerns remain. Some of the new bilingual/ESL teachers hired by DCPS are not certified, and many are in temporary instead of permanent positions. The director of the Language Minority Affairs Branch, Elena Izquierdo, explained:

> One of the things that all teachers must do to be completely certified is to take the National Teachers Exam. If they have not taken that exam when they come on board, they have to be given a 1-year permit which exempts them for that year so that they can take the test. Others are sitting in positions that had to be created this year in order to meet the demands for English as a Second Language services in the school system.[58]

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[49] District of Columbia Public Schools, Language Minority Affairs Branch, "Procedures for Collection, Verification, and Storage of LASbase Data," December 1991.

[50] Elena Izquierdo, interview in Wash. D.C., Jan. 9, 1992.

[51] "Language Minority Affairs Fact Sheet," provided to the Commission by District of Columbia Superintendent of Schools Franklin L. Smith, Oct. 28, 1992 (hereafter "Fact Sheet").

[52] District of Columbia Public Schools, Language Minority Affairs Branch, "Major Accomplishments in 1991-1992," provided to the Commission by Superintendent of Schools Franklin L. Smith, Oct. 28, 1992.

[53] Crowell and Moring, "Education Report," prepared for the D.C. Latino Civil Rights Task Force, submitted at the *Mount Pleasant Hearing*, Jan. 31, 1992 (hereafter Crowell and Moring Report).

[54] Ibid., p. 15.

[55] Ibid., p. 17.

[56] *A Comprehensive Plan*, vol. 2, p. 155.

[57] Jan. 15, 1992 statistics provided to the U.S. Commission on Civil Rights by the Language Minority Affairs Branch in response to a data request.

[58] Izquierdo Testimony, *Hearing Transcript*, vol. 3, pp. 195-96.

Data supplied to the Commission by DCPS indicate that just under one-half of all bilingual/ESL teachers employed by DCPS are in permanent positions.[59] The data do not reveal how many of these teachers are newly hired or how long they have been in the system.[60]

Other testimony presented at the hearing suggests that for at least some teachers, the problem is more long term:

> [S]everal Latino staff members who have been working for DCPS for a number of years have been unable to have their status changed from Temporary Indefinite to Permanent despite the fact that non-language minority staff with comparable levels of seniority have been changed to Permanent status.[61]

The principal of the Carlos Rosario Adult Education Center, where the temporary instructors work, testified at the Mount Pleasant hearing that "these teachers and counselors . . . are very qualified. They have master's degrees, they are bilingual, because to work in that program, you have to be."[62] She told the Commission that she had tried to have them made permanent as early as 1988. She was told at the time that they could not be made permanent, because they were in temporary grant-funded positions.[63]

> I sent them another memo and I attached the board rules that state that even if you're in a temporary position, you can become permanent. Nothing happened, and my employees took it upon themselves to go and meet with the Director of Human Services for the school system. . . . She said, "you should have become permanent a long time ago."[64]

When her employees told her of this conversation, the principal again submitted a request that they be made permanent. She requested the same for a non-Latino employee, also in a temporary position. At that time, the non-Latino employee was made permanent, but the Latino instructors were not.[65]

> I have been struggling with this problem because it is tremendously demoralizing for these employees. One of them has been here since 1980, 12 years, and people who came after her have not been made permanent, but the [non-Latino employees] I have sent have become permanent.[66]

She explained that the other employees who were made permanent in the system were also in grant-funded positions.[67] She concluded:

> I've been trying to get them absorbed into the regular budget because I know if you're in [grant] money, sooner or later you are going to disappear, but I have never been successful. Every year when the budget requests came in, I used to request it. I, in a way, have given up because it's really a waste of my time. They are all still in temporary positions and they have not become permanent.[68]

Addressing the issue of teachers in temporary positions, Superintendent Smith maintained that the reason these staff members were not converted to permanent positions is that their positions are funded by grants that need to be renewed annually. To transfer them to permanent positions would require appropriated funds, which he has requested in the coming budget cycle.[69] It was not clear from his testimony whether he was addressing the specific concerns of the teachers at the Rosario Center or the more general issue of bilingual/ESL teachers in temporary positions.

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[59] The percentage falls to 40 percent when teachers at the Carlos Rosario Adult Education Center are not included in the total.

[60] January 17, 1992 statistics on bilingual and ESL instructors provided to the U.S. Commission on Civil Rights by the Language Minority Affairs Branch in response to a data request.

[61] Crowell and Moring report, p. 21.

[62] Sonia Gutierrez, Principal, Carlos Rosario Center, D.C. Public Schools, testimony, *Hearing Transcript*, vol. 3, p. 142.

[63] Ibid., p. 138.

[64] Ibid., p. 139.

[65] Ibid., pp. 139-40.

[66] Ibid.

[67] Ibid., p. 140.

[68] Ibid.

Another community concern is that Latino students have difficulties gaining equal access to many DCPS programs. For instance, special education services to Latino students were described as inadequate.[70] DCPS has only recently begun to offer bilingual special education programs, which are now available in six District schools.[71] Furthermore, despite a great need and desire for vocational training, Latino students have difficulties gaining access to vocational education programs in District schools. Students referred to the District's vocational schools by counselors seldom remain there for long.[72] They report not feeling "welcome" in the schools. Furthermore, the schools make no special efforts to provide for language-minority students. For instance, the schools have no programs for teaching vocational English as a second language, although even when students have a basic mastery of English, they often need extra help learning terms used in vocational programs.[73] In response to charges that the District provides inadequate vocational education opportunities to LEP students, the District asserts that "it is against the District's policy to discriminate against any student who wishes to participate in our Vocational Education Program,"[74] and points to the "exemplary" vocational education program at Bell Multicultural High School (see below),[75] a school that is widely acknowledged to have a model educational program for LEP students, but is not typical of District schools.

In assessing the reasons for what she perceived to be DCPS' slow progress with respect to providing for the needs of Latino and other language-minority students, a high school principal maintained:

> There is new leadership in the school system that is very supportive of change. However, the legacy of inaction is so long that at the lower levels, the levels with which teachers, administrators and others have to grapple, there is still a great deal of resistance. It's difficult to get [bilingual] people appointed into positions. There is resistance at the local school level to upgrading services. There is not really yet in place a monitoring function that could go into schools and point out when there are not enough Hispanic or other language-minority students that are in courses like calculus, physics, etc. . . . There is the history in the bureaucracy that needs to be contended with.[76]

Responding to these charges, DCPS pointed out that the number of bilingual/ESL personnel had increased and that bilingual/ESL personnel had been exempted from the overall personnel cuts that DCPS had made in recent years. Furthermore, DCPS maintained that it does have staff visiting schools to monitor and provide technical assistance to principals to effect improvements in such areas as provision of comprehensive services to language minority students."[77]

Bell Multicultural High School. Since 1989 the District has operated the Bell Multicultural High School, which has been commended as having a model program for language-minority students. The Bell Multicultural High School began as a community based organization, the Multicultural Career Intern Program (MCIP), formed by a group of volunteers who secured a 3-year grant from the Department of Labor. The grant enabled the volunteers to develop a full-fledged high school, which for

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[69] Franklin L. Smith, Superintendent of Schools, District of Columbia, testimony, *Hearing Transcript*, vol. 3, p. 188.

[70] Rose Marie Inserni, School Committee Coordinator, Carlos Rosario Adult Education Center and Supportive Services Office, D.C. Public Schools, testimony, *Hearing Transcript*, vol. 3, p. 117.

[71] "Fact Sheet."

[72] The Bell Multicultural School's vocational program is an exception.

[73] Inserni Testimony, *Hearing Transcript*, vol. 3, pp. 118-19.

[74] "Responses to Specific Issues Raised in the Commission's Preliminary Report," provided to the Commission by Superintendent of Schools, Franklin L. Smith, Oct. 28, 1992 (hereafter DCPS Response).

[75] Ibid.

[76] Maria Tukeva, Principal, Bell Multicultural High School, testimony, *Hearing Transcript*, vol. 3, p. 156.

[77] DCPS Response, pp. 4-5.

10 years received no support from the public school system.[78]

Bell's original curricular emphasis was on traditional vocational training. In 1989 the school refocused its curricular approach and now offers academic, vocational, and occupational training.[79] Bell describes itself as "an alternative high school whose central purpose and mission is to provide [its] ethnically diverse student population with opportunities and services which respond to their unique characteristics."[80] The educational program addresses the students' needs to "prepare themselves for a career after high school, to develop their skills in English and a foreign language, to succeed in their academic studies, to understand and respect diverse cultures, to cope with economic pressures, and to develop a sense of social responsibility."[81] The school integrates multicultural activities and materials throughout the curriculum.

Because of its approach, Bell draws students from all over the District and in that sense is not a local or neighborhood school. Bell has an enrollment of more than 1,000 students. It has 560 students in its daytime high school program, an additional 150 students in the evening program, and 400 adults who attend both in the day and the evening.[82] Approximately 50 percent of the students are from El Salvador and about 65 percent of all students speak Spanish.[83] Out of the entire staff, 80 percent are bilingual.[84]

Bell and its predecessor, MCIP, have been very successful in providing language-minority students with skills that allow them to find and keep jobs. A longitudinal study of immigrant youth who attended MCIP in the early 1980s revealed that of the original 181 Latinos who entered the program in 1981, 146 continued to reside in Washington, D.C., in 1988.[85] Of those 146, 112 were contacted, and among these, there was virtually "100 percent employment." In 1988 nearly all the youth were working, usually in full-time jobs that provided incomes above the poverty line, such as construction work and waiters for men, and secretarial work for women. Many of the students were working in fields related to the vocational training they had received at MCIP.[86]

A minority of the youth in the study had graduated from high school or received a GED by 1988, and none had graduated from college. Economic constraints and problems with immigration status were the two main impediments to the educational attainment of these youngsters. Nonetheless, the author of the study concluded that the school's strongly vocational approach, which emphasized fusing "education, schooling, and preparation for careers" with a practical internship, resulted in preparation of students to be "successful and responsible members of their communities and of their societies."[87]

Currently, Bell has improved its record with respect to higher education. More than 90 percent of enrolled 12th graders graduate,[88] and about 65 percent of Bell graduates go on to college, a higher percentage than for other District schools. According to Bell's principal, 50 to 60 percent of the students in Bell's gifted and talented program are Hispanic, but in other District schools, the percentage is quite low.[89]

Although obviously successful academically, Bell lacks physical facilities comparable to those of other

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[78] Beatriz Otero, Calvary Bilingual Multicultural Learning Center, testimony, *Hearing Transcript*, vol. 3, p. 167.

[79] Tukeva Testimony and Inserni Testimony, *Hearing Transcript*, vol. 3, pp. 111, 118.

[80] Bell Multicultural High School, "Statement of Philosophy."

[81] Bell Multicultural High School, "A Next Century School." *See also* "Bell Multicultural High School and Maria Tukeva," *El Diario de la Nación*, Jan. 16, 1992, p. 7.

[82] Tukeva Testimony, *Hearing Transcript*, vol. 3, p. 111.

[83] Ibid.

[84] Ibid., p. 114.

[85] A longitudinal study is one conducted and followed up over a period of time that will provide data on changes in the subject studied.

[86] Ready Testimony, *Hearing Transcript*, vol. 3, p. 145.

[87] Ibid., pp. 146-47.

[88] Kathleen Gillette, Program Development Specialist, Bell Multicultural High School, telephone interview, Oct. 6, 1992.

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District high schools. Pointing to Bell's lack of a functioning library and auditorium, a gymnasium, a well-designed cafeteria, or a laboratory for science, a student told this Commission:

> In 1989 . . . [it was recommended] that the District of Columbia school [system] address the physical needs to provide a comprehensive program at Bell. So why do we not have these facilities? We are the only public school in Washington, D.C., that does not have these things. We are also the only public high school in Washington, D.C. that has such a high percentage of immigrants.[90]

As an example of the hardships caused by Bell's inadequate physical facilities, another student added:

> From an athlete's point of view, I can tell you that it is not easy practicing for a championship match in a room with a rubber covered floor. This room which we call a gymnasium is almost the same size as any regular classroom. . . . During games our players get lost because they do not know the inside or outside of the court. Because we have not practiced on a regulation court, we find ourselves unfamiliar with the limit lines, strategies, and regulations of play.[91]

She testified that Mayor Kelly and Superintendent Smith had done nothing to fix the situation.

> During [Mayor Kelly's] visit she promised the student body all the facilities we require. Superintendent Smith also became aware of this in October 1991 and told us that he, too, would help us, but what has happened to these promises? Nothing. Why were we left in the middle of nowhere with only broken promises to hold on to? We do not know.[92]

Bell's academic success has not been carried over to other high schools in the city. Bell's principal pointed out that, although Bell has a coherent sequence of studies, other District schools do not have "a course of studies [that has] been designed to take into account the language acquisition process and the other academic and cognitive needs of the students."[93] DCPS, however, disputes this contention, naming Wilson Senior High School, Deal Junior High School, and Lincoln Junior High School as other schools with comprehensive programs.[94]

DCPS Responsiveness to Latino Concerns

Well-grounded ESL and bilingual education programs are not alone sufficient to guarantee equal educational opportunity for immigrant and language-minority students. The students and their parents must believe that the schools are responsive to their needs and that all students are treated fairly and equitably by teachers, counselors, and school officials. Testimony at the Mount Pleasant hearing revealed a great deal of alienation on the part of Latino parents and students, allegations of the disparate use of corporal punishment against Latino students, and instances where Latino students were illegally refused admittance to District schools based on their immigration status.

Communication Between Parents, Teachers, and the Administration

Poor lines of communication between Latino parents and the schools were identified by witnesses at the Mount Pleasant hearing as one of the basic problems plaguing DCPS. Jocelyn Frye, attorney at the law firm Crowell and Moring, which prepared a report on education for the D.C. Latino Civil Rights Task Force, testified that in gathering information for the report, she found "a strong sense that the parents have not felt that the school system has been responsive to a lot of their concerns."[95]

To a large degree, the poor communication between parents and schools is the result of a failure on the part of DCPS to bridge the gap caused by the

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[89] Tukeva Testimony, *Hearing Transcript*, vol. 3, p. 113.

[90] Ceres Nionbella, testimony, *Hearing Transcript*, vol. 3, p. 274.

[91] Ismania Bonille, testimony, *Hearing Transcript*, vol. 3, p. 275.

[92] Ibid.

[93] Ibid., p. 112.

[94] DCPS Response, p. 5.

[95] Jocelyn Frye, attorney, Crowell and Moring, testimony, *Hearing Transcript*, vol. 3, p. 122.

limited English proficiency of many Latino and immigrant parents. The Crowell and Moring report gives the following examples of Latino parents' complaints:

> Latino parents have stated that they have not been provided with student progress updates, and that the school correspondence is only provided in English. . . . further, parents have alleged that the use of interpreters, for example, during parent teacher conferences, has been blocked by some schools.[96]

The report points out that the 1991 OCR memorandum on schools' obligations towards limited-English-proficient students specifies that "parents must be notified about school activities, and the correspondence should be provided in another language if necessary."[97]

Another witness testified that, although there have been some attempts to include Latino parents in parent-teacher association (PTA) activities in order to provide a mediating opportunity for conflict resolution or discussion, "the majority of the schools and their PTAs make little or no effort to include Latino or non-English-speaking parents into their PTA by providing bilingual material or providing a translation that would help draw those parents into the system."[98]

DCPS, however, maintains that the lines of communication between Latino parents and the schools have been "improved significantly," citing the fact that major communications between parents and schools are being provided in multiple languages, including Spanish; that translators are available as needed and are made available for PTA activities; and that the District provides a school newsletter and parent education courses in several languages.[99]

The problem sometimes appears to go beyond the mere difficulty or neglect in bridging the language gap, however. In some instances, the schools appear to be engaging in willful discriminatory behavior. Rose Marie Inserni of the Carlos Rosario Adult Education Center told this Commission that when she was a member of the Education Committee of the Commission on Latino Community Development in 1988, she heard:

> allegations like the use of corporal punishment, violations of parents' rights, a lot of principals holding conferences regarding [students] excluding parents' participation, the use of offensive and derogatory language against [Latino parents] and their children, [and] not [translating meetings] into Spanish when the parent didn't speak a word of English.[100]

She added that the "same allegations" were still being raised when she held meetings with students to talk about the Commission's Mount Pleasant hearing.[101]

One possible source of the alienation of Latino parents from DCPS is the District's procedures for handling problems. Ms. Frye observed that "one of the problems that I found in doing the report is that there is a lack of coherent investigative procedures and parents aren't clear about how the [problems] will be investigated and if they are being investigated."[102] If parents sense that the schools' complaint system is unresponsive, they will be less likely to address problems when they arise and more inclined to wait until a major problem arises before they speak up. The District maintains that parents are encouraged to submit concerns and complaints to principals, to the Language Minority Affairs Branch, or the Office of the Ombudsman.[103]

Another witness observed that "part of the problem here is that most of these Latino students come from families who have no previous background in higher education . . . and from [school] systems that are different [from] the system here."[104] It was recommended that the DCPS retain more "bilingual counselors in the schools who can, starting at the elementary level, begin to address these needs with parents and children so that it's not just when you get to your senior year"[105] that parents begin thinking about higher education for their children.

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[96] Crowell and Moring Report, p. 26.

[97] Ibid.

[98] Beatriz Otero, testimony, *Hearing Transcript*, vol. 3, p. 159.

[99] DCPS Response, p. 6.

[100] Inserni Testimony, *Hearing Transcript*, vol. 3, p. 116.

[101] Ibid., p. 117.

[102] Frye Testimony, *Hearing Transcript*, vol. 3, p. 122.

[103] DCPS Response, p. 6.

The Crowell and Moring report concluded:

> [a]though there are a variety of strategies that can be used to improve communication, there also must be a concurrent effort to stress the importance of involving language minority parents in the education of their children to the same degree as non-language minority parents, and provide guidelines to schools on how this goal can be achieved.[106]

Corporal Punishment

As noted above, allegations about the disparate use of corporal punishment against Latino students are recurring complaints of Latino parents.

A witness at the open session of the Mount Pleasant hearing described separate instances in which she said her daughter and her son, both in the lower primary grades, were singled out for corporal punishment in District schools and about the difficulty she had getting the school to respond to her concern.

> One afternoon when I went to pick up [my son], he was unable to walk. I tried to find out from him what happened, but he did not explain it to me. When I reached home, I examined the child, and he had the signs that a ruler had been broken on his leg, and a piece [of the ruler] was embedded in his skin.
>
> At that time, I could not speak to the teacher, because I could not speak English. There was no one there who could speak Spanish. Some time later, I went to the central office and presented the case. [They told me that] I should not let [2 months] go by before complaining.
>
> Last year . . ., [w]hen I went to pick up [one of my daughters], she was crying. . . . [H]er friends told me that she had been working with glue, she had some papers in her hand. The glue was going to be dropped and she asked the teacher to hold it. The teacher would not pay attention to her, and she dropped the glue. The teacher hit her on her hand.
>
> By that time, I spoke English. I told the teacher that this is the last time that I would allow [her] to touch my daughter. . . . She told me then that she hadn't done anything. . . . When I told her I was going to the central office, she said not to go talk to the principal. I said [I wouldn't, because] I know the principal, and I know that he's not going to do anything.
>
> [Later], I realized that the teacher had a place in the back of the classroom where when she felt like it, all the Hispanic children were placed if they made a mistake. If they didn't bring the homework, she would hit them with a ruler on their hands. . . . [M]ore than five times I picked [my daughter up at school], and she was crying. The teacher never wanted to talk to me about the child.[107]

This mother moved out of the District rather than continue sending her children to District schools.[108]

One witness testified that students had specifically asked her to tell the Commission not to take the allegations of corporal punishment lightly. She emphasized that corporal punishment is not an isolated event. Moreover, she maintained, when situations involving corporal punishment have been investigated, many of the school's investigations are inconclusive, and no disciplinary action is taken against the responsible party.[109]

Another witness, who directs a community-based multicultural learning center for preschool children, testified that she personally knew about a "a particular [elementary] school that has a first grade teacher we all know who uses a ruler and uses [it] not to draw straight lines. This is something that [happens] especially with Latino children because she does not understand them."[110] She added that parents "are very apprehensive about following through [and com-

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[104] Otero Testimony, *Hearing Transcript*, vol. 3, p. 161.

[105] Ibid.

[106] Crowell and Moring report, p. 26.

[107] Rosie Escobar, testimony, *Hearing Transcript*, vol. 3, pp. 288-90.

[108] Ibid., pp. 290-91.

[109] Inserni Testimony, *Hearing Transcript*, vol. 3, p. 169.

plaining to the school about such abuses] because they really fear retaliation in the schools."[111]

That the District has not received formal complaints about the use of corporal punishment[112] may well indicate that it has not put in place an effective procedure for processing, investigating, and resolving complaints that is accessible to immigrant and limited-English-proficient parents.

Immigrant Access to Public Schools

Testimony at the Mount Pleasant hearing indicates that some Latino students may have been denied access to District schools. The Commission received testimony that Latino parents were being told by some DCPS officials that certain district schools were not "for Latino children."[113] Maria Tukeva, principal of the District's Bell Multicultural High School testified that she often receives complaints from students who have been refused enrollment in other District schools. She stated that students often "come to our school because they were told they couldn't attend another school unless they had their immigration documents."[114]

Although DCPS must obtain documentation that establishes proof of residency in the District as well as necessary immunization records, the law does not require that a student or the parents be United States citizens. Furthermore, Federal law prohibits the denial of a public education based on legal status in the United States. Addressing the issue of immigrant student access to public schools, the Supreme Court ruled in *Plyler v. Doe*[115] that resident undocumented students have an equal right of access to primary and secondary public education that is provided to citizens of the United States.

DCPS has taken steps to ensure that schools are open to students, regardless of their immigration status. In January 1992, the Superintendent of Schools issued a directive to District schools "specifying that no students, including those referred by the Bilingual Office, were to be turned away from any D.C. Public school,"[116] and DCPS maintains that principals are consistently instructed that no students are to be rejected from DCPS based on their immigration status. Principals violating these directives are subject to disciplinary action.[117]

Latino Students at the University of the District of Columbia

The low education levels and high dropout rates of Hispanics nationwide as well as in the District of Columbia, along with the evident shortage in many fields of trained professionals who are bilingual in Spanish and English and can serve the District's Latino community, demonstrate the importance of making postsecondary educational opportunities available to Latinos in the District. Yet testimony at the Mount Pleasant hearing revealed that some in the Latino community believe that they are virtually shut out of the University of the District of Columbia (UDC), the District's only public university,[118] by "discriminat[ory] practices of UDC against the Latino community."[119]

UDC officials state that they have no way of accurately determining the number of Latino students on

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[110] Otero Testimony, *Hearing Transcript*, vol. 3, pp. 170-1.

[111] Ibid., p. 171.

[112] District Response, p. 7.

[113] Ibid.

[114] Tukeva Testimony, *Hearing Transcript*, vol. 3, p. 173.

[115] 457 U.S. 202 (1982).

[116] DCPS Response, p. 7.

[117] Ibid.

[118] The University of the District of Columbia (UDC) was created in 1977 by merging three previously independent institutions, District of Columbia Teachers College, Federal City College, and Washington Technical Institute. UDC is governed by a 15-member Board of Trustees, 11 of whom are appointed by the Mayor with City Council approval. The other four members are chosen by alumni and students. UDC has five academic colleges and offers 149 programs. The highest degree offered by UDC is the master's degree. *Indices*, 1991, p. 291.

[119] Mauricio Alarcon, President, Salvadorians United for Better Education, testimony, *Hearing Transcript*, vol. 3, p. 128.

campus, because, although they request students to provide information on their ethnic backgrounds, students cannot be required to do so.[120] One estimate, however, puts the number of Latino students at roughly 3 percent of the total UDC student population of 12,000.[121]

Latino Eligibility for In-State Tuition

Both the Latino Civil Rights Task Force and a witness at the Mount Pleasant hearing alleged that UDC often charges resident Salvadoran and other foreign students out-of-State tuition, effectively creating an enormous barrier to access to higher education for most Salvadoran students, who are often unable to afford the higher rate.[122]

Before 1988 students who indicated that they were not U.S. citizens were treated as international students, hence assumed not to be residents.[123] In 1988 the Board of Trustees of UDC adopted a resolution stating that "[t]he University shall no longer inquire into a person's citizenship for the purpose of establishing residency and eligibility for in-state tuition."[124] The clear intent of this resolution was to extend eligibility for in-State tuition to undocumented aliens as well as other aliens residing in the District of Columbia. After taking office in 1991, UDC President LeMelle directed that the role of citizenship in the admissions process be clarified, and subsequently, the university changed its policy of presuming that all foreign citizens were international students.[125] UDC's Acting Director of Admissions explained that UDC's current policy is to accept for in-State tuition all aliens—regardless of whether they are documented, on temporary protected status, or legal immigration status—provided that they have been District residents for at least 1 year before applying for in-State tuition.[126]

Despite the change of policy, it may still be difficult for some Latino students, particularly those who are undocumented aliens, to qualify for in-State tuition, because of stringent documentation required by the university for establishing District of Columbia residency. To be eligible for in-State tuition, all students are required to submit documentation proving their District residence for at least 1 year. To establish such residence, UDC requires students to submit "three forms of documentation showing 12 months of D.C. residency"[127] from among the following categories:

—Statement of Income (e.g., W-2 wage statement; letter of employment on employer letterhead showing a D.C. address);
—D.C. Tax; Housing Agreement (e.g., canceled rent checks, lease, deed);
—Property Title;
—Active Military Duty;
—D.C. Motor Vehicle registration or insurance;
—Voter Registration;
—Subsistence Assistance Records;
—License of A.D.C. Professional Practice; and
—utility bills with canceled checks.[128]

If students disagree with UDC's determination that they should be charged out-of-State tuition, they can request a "residency audit," which is performed by the Records Office; however, the audit requires the same forms of documentation as the initial determination.[129]

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[120] Lawrence E. Bradford, Acting Coordinator, Office of Support Services, University of the District of Columbia; Sandra B. Dolphin, Acting Director, Office of Recruitment and Admissions, University of the District of Columbia; Marina Felix, Hispanic Programs Coordinator, University of the District of Columbia; and Armando R. Prieto, Equal Employment Opportunity Manager, Office of Institutional Advancement, University of the District of Columbia; interview in Wash., D.C., Aug. 4, 1992 (hereafter "UDC Officials Interview").

[121] *Latino Blueprint*, p. 53.

[122] Ibid., pp. 53-54; and Alarcon Testimony, *Hearing Transcript*, vol. 3, pp. 127-36.

[123] David A. Splitt, General Counsel, University of the District of Columbia, letter to Carol McCabe Booker, General Counsel, U.S. Commission on Civil Rights, Oct. 15, 1992 (hereafter Splitt Letter).

[124] University of the District of Columbia, Board of Trustees, Resolution No. 88-94 on International Student Regulations.

[125] Splitt Letter.

[126] UDC Officials Interview.

[127] University of the District of Columbia, "Resident Audit Check List," provided to staff, U.S. Commission on Civil Rights, Aug. 5, 1992.

[128] Ibid.

Undocumented and other noncitizen students do not have voter registration cards or serve in active military duty. Many of the other forms of documentation of District residency acceptable to UDC are likely to be difficult for immigrant students, particularly those who are undocumented, to obtain. Because many Salvadorans are low income, for instance, and therefore might not own automobiles, they are unlikely to be able to produce a D.C. motor vehicle registration or insurance. Similarly, because many live in group quarters, they are unlikely to have leases, property deeds, or utility bills in their names.

UDC officials maintain, however, that there is a necessity for a clear across-the-board policy that applies to all students. They say that they work with students to find ways of documenting their D.C. residency, and they maintain that UDC's Hispanic program coordinator has made efforts to inform Latinos in the District of Columbia of what documentation is necessary for eligibility for in-State tuition. They also point out that many U.S.-born students also face difficulties in gathering the requisite documentation proving D.C. residency.[130] Nevertheless, in a letter to this Commission, UDC acknowledged that it "understands the problems encountered by some non-citizen students, especially undocumented aliens, in providing adequate evidence of District residency," and stated that the university's criteria for establishing residency are currently under review by the university.[131]

Programs for Latino Students

In accordance with the District of Columbia law enacted in 1985 requiring each District agency to have a Hispanic program manager, UDC created such a position that year. In addition to the duties prescribed by law, the incumbent in that position has taken on the duties of recruiting Latino students, advising Latino students on campus, and representing their interests to UDC officials.

In addition to this position, UDC has an admissions counselor for international students, which includes foreign students as well as U.S. immigrant students and other noncitizen students living in the United States, and an International Multicultural Office, also serving foreign students. The primary focus of the international student admissions counselor and the International Multicultural Center appears to be foreign students temporarily in the United States to pursue their studies and not non-U.S. citizens living in the United States on a long-term or permanent basis, such as the Salvadorans living in the District of Columbia. Therefore, the Hispanic program manager is the only UDC official whose duties explicitly require her to reach out to the District's Latino community and promote the interests of the District's Latino students on campus.

The Hispanic program manager appears to play an important role as a liaison between the university and the Latino community both on and off campus. The position does not have the power to make or implement university policy, however, and its incumbent does not have the stature or authority to decide academic issues of concern to Latino students, such as course content, the creation of new educational programs, and the recruitment and hiring of faculty.

The Hispanic program manager has been a temporary position in the Office of the President since its inception. The UDC administration is making efforts to make it a permanent position, as recommended by the Latino Civil Rights Task Force,[132] but the position is also being moved out of the Office of the President to the Office of Admissions and Recruitment.[133] UDC maintains that this change is part of a general reorganization of the Office of the President, and that it "in no way reflects any reduction in importance or authority of . . . the Hispanic Program Coordinator" and that "access to the President has not been reduced."[134] Nevertheless, moving the Hispanic program coordinator position into the Office of Admissions gives the appearance of limiting the scope of the coordinator to recruitment only and does nothing to increase the stature or authority of the position.

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[129] UDC Officials Interview.

[130] Ibid.

[131] Splitt Letter.

[132] *Latino Blueprint*, p. 54.

[133] UDC Officials Interview.

Although a recommendation in the Latino Civil Rights Task Force report suggests that UDC does not have a permanent English as a Second Language program,[135] UDC officials explained that UDC does have a permanent ESL program within the Department of Communications in the College of Liberal and Fine Arts. The program has been ongoing for several years and has 180 incoming students next year.[136]

Representation of Latinos on UDC's Faculty, Staff, and Board of Trustees

As noted by the Latino Civil Rights Task Force,[137] Latinos are almost totally unrepresented among UDC employees: UDC has only 20 Latino employees out of a total of roughly 2,000 faculty, administrators, and staff.[138] Among these Latino employees are one dean, one professor, and two assistant professors, with most of the remaining in secretarial or security positions.[139] UDC maintains that it has been hampered in its efforts to recruit additional Latino faculty and staff by budget cuts that have virtually halted hiring in recent years.[140]

There is currently no Latino representation on UDC's 15-member Board of Trustees, which is appointed by the Mayor.

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[134] Splitt Letter.

[135] *Latino Blueprint*, p. 54.

[136] UDC Officials Interview.

[137] *Latino Blueprint*, p. 53.

[138] UDC Officials interview.

[139] Lawrence Bradford, Acting Coordinator, Support Services, University of the District of Columbia, letter to Nadja Zalokar, U.S. Commission on Civil Rights, Aug. 20, 1992.

[140] UDC Officials Interview.

Chapter 11. Conclusion: Findings and Recommendations

In calling for an investigation by the U.S. Commission on Civil Rights, the District's Latino community presented three main allegations to the Commission: first, that there existed a pattern or practice of abuse, harassment, and misconduct by the District of Columbia Metropolitan Police Department against the Latino community; second, that Hispanic representation in the District of Columbia government is not proportionate to the community's representation in the general population of the District of Columbia, and moreover, that the disproportionate representation was the result of discrimination by the District government; and third, that the Latino community was not receiving its fair share of government services. After examining these allegations, the Commission has found the allegations to have been justified: a districtwide pattern or practice of police misconduct has existed in the Third Police District, the district that has the highest concentration of Latinos in the District of Columbia; many factors evidence a resistance to the hiring of Hispanic employees by the District government, including sworn testimony from D.C. officials as to this resistance, a failure by D.C. officials to address bilingual service needs, and the fact that the number of Hispanic government employees is declining, despite the continued growth of the Hispanic population, and yet there have been no sustained comprehensive recruitment efforts undertaken to ensure equal employment opportunities; and lastly, there is a widespread shortage of bilingual personnel, signage, and materials throughout the District government, which effectively constitutes denial of Latino access to governmental services.

Equity for the District's Latino community requires clear, unequivocal leadership from the Mayor's Office and the heads of all District government departments and agencies to address the concerns of the Latino community and to ensure equal employment opportunity and equal access to government services. From the Metropolitan Police Department, it especially requires adherence to the highest standards of professionalism and constant vigilance to root out those who would violate those standards.

The District's response thus far to needs and recommendations put forth (most of them for the second time since 1985) in *The Latino Blueprint for Action* has been piecemeal and inadequate. Excuses citing budget constraints will not, and should not, satisfy most of the community's legitimate demands, especially since a substantial number of the Commission's recommendations will not require additional funding. One witness used the analogy of a family in need to describe the only acceptable course for the District of Columbia:

> This family has had a serious cutback in its income. This family is having tremendous financial constraints in meeting the needs of its family members. The decision the family needs to take is whether it will resolve to stop feeding or sacrifice one of its family members or does it find a way in which it will redistribute the pot among all of its family members for the well-being of the whole.
>
> . . . very often what we are hearing is that we are not able to provide all the services that the language-minority community asks for because the resources aren't available. Our challenge to that system and to our governmental community is that it has a responsibility to assure that we have a wholesome community, and a wholesome community means that we afford the services and the rights and the responsibility to all members of that community.[1]

That, very succinctly, is the challenge facing the District of Columbia, although certainly not unique to it. How it meets that challenge will be a determining factor as to whether it achieves the healing so vital to its goal of serving "as a model to the world . . . a community undeniably enriched by the people of many races, cultures and backgrounds."[2]

This report is the first in a series of reports that the Commission will issue during the course of its current study, Racial and Ethnic Tensions in American Communities: Poverty, Inequality, Discrimination. The Commission's findings and recommendations are set forth below.

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[1] Beatriz Otero testimony, *Mount Pleasant Hearing*, vol. 3).

[2] *See* Resolution 7-39, Council of the District of Columbia, "Designation of the District of Columbia as a Multiracial and Multicultural

Findings and Recommendations

General

It was not until a full year after the Mount Pleasant disturbance that the Mayor released a formal response to the Latino community's concerns, and when it came, the response was largely a compilation of individual initiatives undertaken or planned by District agencies rather than a comprehensive approach to addressing the needs and concerns of the District's Latino community. Although the Mayor's response included a Multicultural Services Delivery Initiative that attempts to address Latinos' problems broadly and contains laudable policy goals, it gives little indication as to how or when it will be implemented and how agencies will be held accountable for its implementation. Furthermore, the initiative does not have accompanying funds.

- The Mayor must undertake a sustained leadership role to open and maintain lines of communication with the Latino community and to ensure that the legitimate concerns of the Latino community are addressed by District government. The Mayor must consult regularly with the Latino community, the Office on Latino Affairs, and other District officials to ensure that the District, with community input, develops, implements, and evaluates plans to serve the Latino community equitably. As a partial step in this direction, the Mayor must ensure that the District government moves quickly to implement all plans outlined in her response to the Latino community as well as those in the Mayor's Multicultural Services Delivery Initiative. She must provide District agencies with timetables and deadlines for implementing reforms, ensure that District agencies are held accountable for any failures to implement the reforms, and provide necessary funds for their implementation. Furthermore, the Mayor must make it a top priority to consider and respond to the recommendations contained in this report. In considering these recommendations, the Mayor must consult not only District government officials but also the Latino community.

The Office on Latino Affairs (OLA) has been ineffective in fulfilling its statutory role of promoting the welfare of the District's Latino Community. Until recently, the Director of OLA did not meet regularly with Spanish program coordinators of other District agencies as required by law, resulting in the absence of a crucial means of communication and coordination of District services to Latinos. Although the Office on Latino Affairs provides translation for other District agencies upon request, it does not regularly inventory informational forms, brochures, and signs used by District agencies to determine those requiring translation into Spanish.

- The Mayor must revitalize the role of the Office on Latino Affairs in ensuring equal access of Latinos in the programs and services of the District government. As part of this revitalized role, the Director of OLA must meet regularly with Spanish program coordinators of other District agencies and must be given direct access to the Mayor. Also, the Office on Latino Affairs must regularly determine which forms, brochures, and signs used by other District agencies require translation into Spanish, translate them, and assure their appropriate distribution and monitor their use.

Despite repeated requests from the Latino community, and identification of the problem as early as 1980, there continues to exist a widespread need for bilingual personnel, signage, and materials throughout the District government. The need for bilingual personnel extends throughout most areas of the District government, including health and social services, public housing information, law enforcement services, education, and the District's court system. The 1985 *Latino Community Agenda* report had called on the District government to conduct a government-wide formal assessment of the need for bilingual services. Such a request is not unheard of, as other jurisdictions, such as Illinois and California, statutorily require a formal assessment of the need

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City Resolution of 1987."

for bilingual personnel, as well as reports to be submitted to the State legislatures. Yet, the District government has never made such an assessment and the need remains for bilingual personnel in public contact positions.

- The District of Columbia Council should enact legislation requiring the District government to conduct and submit to the Council a formal government-wide assessment of the need for, and availability of, bilingual personnel within the District government, every 5 years. The assessment will assess the need for government services for limited-English-proficient populations in the District of Columbia, including, but not limited to, the Spanish-speaking population.

Recruitment of bilingual personnel by District government agencies has been sporadic and inadequate. Formal recruitment plans are seldom devised, and money is rarely available to advertise in the local Spanish-language newspapers or to recruit bilingual personnel. Moreover, confusion and lack of central accountability exists. For those agencies under the Mayor's authority, the Office of Personnel has overall responsibility for recruitment, yet it relies on the individual agencies to identify those positions that require bilingual skills and to provide the funds for recruitment. The final selection of candidates also rests with the individual agencies. Therefore, although the Office of Personnel appears to have responsibility for meeting the government's need for bilingual personnel, in practice this office is dependent upon the commitment of the individual agencies. As a result, the agency heads, the director of the Office on Latino Affairs, the director of the Office of Personnel, and the Hispanic program officer all share some responsibility in this area, but no single individual is held accountable for the government's failure to recruit and hire bilingual personnel.

- The Director of the Office of Personnel must be given the overall responsibility for overseeing the formal needs assessment and monitoring the actions of the agencies to fill the identified bilingual positions. The Office of Personnel must monitor the efforts of agencies, but the agency heads must be held accountable for deficiencies in their respective agencies. In its recruitment efforts, the District should consider some of the initiatives that other jurisdictions have undertaken, such as a pay supplement for employees in positions requiring bilingual skills and using fluent bilingual capability as a ranking or selective placement factor where appropriate. The efforts must be coordinated with the Office on Latino Affairs and other agencies and advisory groups concerned with language-minority groups.

Employment

Many factors indicate resistance to the hiring of Hispanic employees by the District government: The Commission received sworn testimony from Hispanic employees within the Office of Personnel that there is resistance to the hiring of Hispanics. The agency heads generally have not through their own initiative recruited a sufficient number of bilingual personnel in positions having public contact with Spanish-speaking clientele, despite the obvious need. The overall number of Hispanic employees in the District government is declining, despite a growth in the Hispanic population. And representation of Hispanics in the government work force appears to be disproportionately low compared to their representation in the District's population. The District government currently employs approximately 745 Hispanics, or 1.5 percent of the government's work force. Hispanics are between 5 and 11 percent of the District's population, depending upon the statistics relied upon. Although the hiring of Hispanic employees is an equal employment opportunity issue that is separate from the need for bilingual personnel, the District government would probably increase its Hispanic representation just by meeting the government's needs for bilingual personnel.

- The District's Office of Personnel must maintain data and conduct an assessment of the individual agencies' hiring practices with respect to the Hispanic community. The results of the assessment must be shared with the agency heads and with the Mayor, and affirmative steps must be taken to eliminate any discriminatory practices and ensure equal employment opportunity. The Commission further recommends that the evaluation of agency heads take into consideration their performance of these duties.

Contrary to D.C. Law 1-63 which requires the District's agencies to submit affirmative action plans, there has never been compliance with this requirement by all of the District's agencies, and none of the agencies has a current affirmative action plan. No unit within the District government monitors the representation of Hispanics in individual agencies, including the D.C. Office of Human Rights and Minority Business Development, which is required to do so. Furthermore, there has been no monitoring of agencies' submission of affirmative action plans for over 5 years. The D.C. Office of Corporation Counsel is currently drafting a Mayoral Order to require submission of such plans, which will take into consideration prior case law challenging the legality of some of the District's plans.

- The Office of Corporation Counsel must expedite the development of a legally sound affirmative action program.

The programs that have been initiated in the past to increase the hiring of Hispanic and bilingual employees (the Spanish program coordinator program and the Hispanic Employment Program) have not been effectively implemented. The Spanish program coordinators, which are now synonymous with Hispanic program managers, are generally employees in the lower grades with little contact with the agency heads. Although the law requires the Director of the Office on Latino Affairs (OLA) to meet at least once a month with the Spanish program coordinators, in practice, until recently, the OLA director did not meet with the coordinators. The Hispanic program officer in the D.C. Office of Personnel coordinated the meetings but did not do so on a monthly basis. Unlike the Director of OLA, who until recently reported directly to the Mayor, the Hispanic program officer does not report directly to the Mayor, and his responsibilities are limited to employment issues.

The Hispanic Employment Program has not been allocated any funds for recruitment, and the individual agencies do not submit to the Hispanic program officer any reports regarding recruitment or employment statistics.

- The purpose behind the act establishing the Office on Latino Affairs must be implemented: the Director of the Office on Latino Affairs must continue meeting monthly with the Spanish program coordinators and the Mayor must be kept apprised of this information. The employees appointed to the positions of Spanish program coordinators must be at a level within the agency, and have sufficient interest in the goals of the program, to effectuate change.

The Hispanic program officer should be included in the meetings between the OLA Director and the Spanish program coordinators. In addition, the individual agencies must be required to submit to the Hispanic program officer on a regular basis information such as the agency's recruitment activities, employment statistics, and any information that the Hispanic program officer deems necessary in order for the officer to properly advise the Director of Personnel regarding Hispanic employment in the District government.

Private sector employment discrimination against Latinos in the Washington, D.C., metropolitan area is prevalent. Latinos are discriminated against more than 22 percent of the time by private employers when seeking employment through telephonic response to job advertisements.

- The local and Federal agencies charged with enforcing fair employment laws must increase outreach into the metropolitan area's Latino communities, including radio announcements, television announcements, and other media outreach, in order to increase Latinos' awareness of their rights.

Latinos have virtually no voice in the District government, because they are underrepresented in positions of power and authority. Latinos are almost nonexistent among the District's elected and appointed officials. There are no Hispanic representatives on the District Council or on the School Board, and almost none on the Advisory Neighborhood Commissions. Latinos make up 5 percent of Mayor-appointed members on the District's boards and commissions, although the Office on Latino Affairs estimates that Latinos are, conservatively, at least 10 percent of the District population.

- The Mayor must appoint more Latinos to District commissions, boards, and high-level positions in District government.

Accurate, reliable, and complete data are vital for government, private sector, and other efforts to provide equal opportunity for Latinos, as well as other population groups. The District cannot effectively gauge the needs of the Latino community without reasonably accurate estimates of its size, composition, and socioeconomic characteristics. Such knowledge would facilitate the District's attempts to measure Latinos' need for District-provided services, its development of affirmative action plans to recruit Hispanic employees, and optimal planning for an equitable distribution of the District's scarce resources. Moreover, until the Latino community has access to reliable, independently generated data on its size, composition, and socioeconomic characteristics, it will be at a disadvantage relative to other populations in the District in advocating for services to meet its needs. Yet, the District does not even have a reliable estimate of the size of the District's Latino population. Furthermore, although many maintain that the number of Latinos in the District may be twice as high as the official 1990 Census count, the District has made no serious effort of its own to determine the number of Latino residents in the capital. With the upcoming release of detailed data from the 1990 Census of Population (which, although it is based on an undercount, provides a wealth of detailed information on District residents not available in any other source), now is an excellent time to undertake an analysis of that data as well as other data sources.

- The Office on Latino Affairs, as the District's agency responsible for ensuring that the needs of the District's Latino community are met, should, with professional guidance, plan and undertake the development of a project to provide the District government with more accurate data on its Latino residents, including their number, their composition, and their characteristics, so as to aid District government agencies in planning to meet the social service and other needs of the Latino community. Such an endeavor should use a variety of information, including, but not limited to, a thorough analysis of the detailed data in the 1990 Census of Population, and might require survey research. A report summarizing and analyzing these data should be made available to all District agencies to help them in their planning process, as well as distributed widely to others in the District.

Immigration

A substantial increase in Salvadoran immigration began in the early 1980s, with many of these immigrants either living in the United States without legal authorization or only under the temporary protection of the immigration laws. With the status of the peace accord in El Salvador still tenuous, many Salvadorans are reluctant to return to the economically weak and politically torn country. For such individuals, life in the United States has often spawned poverty, subsistence in slums and crowded housing, coupled with an apprehension that accompanies the threat of deportation. Fear has been a driving force behind many of the problems facing Salvadorans—fear of deportation, fear of police, and fear of government. Many Salvadorans have found that government services for Salvadorans are limited in the United States and employment exploitation is commonplace. Without substantial assistance to remedy the problems, the continued fears and desperation faced by many Salvadorans will persist, making Salvadorans even more an insular minority than they currently are.

- Before expiration of deferred enforced departure status, Congress must undertake to arrive at a long term solution to the ambiguous legal status of Salvadorans currently residing in the United States.

Police-Community Relations

A pattern or practice of police misconduct has existed in the Third Police District, affecting a broad cross-section of the population. Although Hispanic residents filed very few complaints of police misconduct with the Civilian Complaint Review Board (CCRB), many of them live in the Third District, and the low number of Hispanic complaints filed is more likely a reflection of their immigration status and fear of authority than an indication that they were less affected. The Third District, which has the highest concentration of Latinos, had the highest overall CCRB complaint rate during the 1985-1991 period; the highest complaint rate from residents; the most multiple complaint officers—officers repeatedly named in citizen complaints for police misconduct; and the highest number of disorderly conduct arrests over a 5-year period. Yet, the Third District did not have the highest crime rate or the highest number of service calls or officers assigned per capita, factors that might account for the high complaint rate. The MPD's past efforts to monitor citizen complaints or a pattern or practice of misconduct have been seriously inadequate.

- The Metropolitan Police Department must ensure that those officers identified by the newly implemented early warning system who are subject to multiple complaints or lawsuits alleging police misconduct, or otherwise demonstrate a pattern of behavior that may interfere with their performance, receive immediate and appropriate action, such as intensive supervision, training, counseling, or discipline. Additionally, the Department must ensure that the Field Inspections Unit fulfills its specific responsibilities for conducting regularly scheduled evaluations of reporting procedures to ensure that department policy is being followed, periodic audits of reports received, and regularly scheduled evaluations of the processing of citizen complaints, including interviews with complainants to ascertain quality of services provided.

Testimony at the Commission hearing, CCRB cases, and other evidence reveal that disorderly conduct arrests can be a tool of police harassment or a means to cover up their use of unnecessary force. In the first quarter of FY 1991, no charges were brought in 65 percent of the 510 disorderly conduct arrests made by MPD officers. For a 5-year period, the Third District ranked the highest in disorderly conduct arrests—more than double the number of such arrests from the next highest district. The MPD's efforts to monitor abuse of disorderly conduct arrests, and the MPD's training regarding its proper use, have been ineffective. Training for recruits, as well as experienced officers, has also been deficient in the use of force, human relations, and multicultural sensitivity.

- Ongoing, comprehensive training on discretionary arrests must be implemented, along with increased efforts to monitor and discipline its abuse. A greater emphasis must be placed on recruit and experienced officer training regarding discretionary arrests, including the requirements for a disorderly conduct charge. Recruits must receive specific instruction dedicated to the use of force, alternatives to its use, and reporting requirements, in addition to physical and firearm training. An intensive human relations training program must be established for police officers at every level of command, as required by the D.C. Code. Active community participation must be ensured during the development, planning, and implementation of multicultural sensitivity training, and training must be evaluated and revised where appropriate on a periodic basis.

The Federal Government can contribute significantly to remedying problems of police abuse by the identification and vigorous prosecution of police abuse cases. There are no nationwide statistics compiled, classified, and published regarding the incidence of local police abuse and discipline of police officers, as there are no Federal reporting requirements for local law enforcement agencies regarding police abuse incidents and discipline of officers. The United States Department of Justice's prosecution of police misconduct cases has been impeded by the "specific intent" requirement of 18 U.S.C. § 242. The Department of Justice also lacks authority to bring suits against police departments where a pattern or practice of abuse is alleged.

- It is imperative that the Federal Bureau of Investigation be directed to collect, classify, and publish nationwide statistics on police abuse incidents and discipline of officers for use in law enforcement administration and management and to facilitate more accurate assessment of the extent of police abuse in the United States. Data collection should include race, ethnicity, sex, and age of offenders; race, ethnicity, resident status, sex, and age of victims; arrest information; type of injury; and type of weapon or force involved.

- The Congress should amend Title 18 § 242 to remove the prosecutive impediment presented by the judicially imposed "specific intent" requirement. The Congress should also enact legislation specifically authorizing the Attorney General of the United States, as well as private litigants, to bring a civil action for equitable relief where he or she has reasonable cause to believe that State or local officials are engaged in a pattern or practice of depriving persons of rights secured or protected by the Constitution and laws of the United States.

The low number of Latinos in the Metropolitan Police Department hampers its ability to function effectively in and earn the respect of the District's Latino community, thereby increasing the potential for tension and violence. Only 2.5 percent of the MPD's civilian and sworn employees are Latino, and the Department has no Latinos above the rank of lieutenant. As the Commission found a need for bilingual personnel throughout the District government, the need is perhaps most acute in the delivery of law enforcement services, where access to such services can be a lifeline to the Latino community in life-threatening situations, such as 911 emergency calls. Although the daily demand for bilingual officers, as well as the Department's shortage of such officers to meet this intense demand efficiently and effectively, is clear, only 3 percent of MPD officers speak fluent Spanish. The MPD's past efforts to recruit qualified Latino and bilingual personnel have been ineffective and sporadic.

- The Metropolitan Police Department must establish a comprehensive written recruitment plan for Latinos and other underrepresented minorities, and prepare annual reports on its progress in achieving increased representation. Latino and other minority personnel with effective bilingual capabilities and multicultural sensitivity must be assigned to the MPD's Recruitment Branch and included in all recruitment activities. The Department must also adopt a tutoring initiative to assist Latinos and other interested persons in preparing for police entrance examinations, and encourage participation in study groups for the purpose of effectively preparing for selection in supervisory and command positions. Affirmative efforts, including the use of multilingual Cadet Program recruitment materials, must be made to recruit Latino and other minority cadets. Efforts to increase bilingual personnel should include using bilingual capabilities as a ranking or a selective placement factor in vacancy announcements. The MPD should offer appropriate incentives to officers interested in developing broader language skills or enhancing their language proficiency.

Civilian Oversight of Policing

The District of Columbia's Civilian Complaint Review Board (CCRB) is hampered by a serious shortage of staff and funds, and is unable to keep pace with the number of citizen complaints of police misconduct it receives. The CCRB's critical lack of staffing hinders its ability to investigate and process complaints of police misconduct in a timely manner. At the end of FY 1991, one-third of the CCRB complaints received since 1985 remained open. The median time to close a case is 402 days, with 25 percent of the cases requiring more than 3 years to complete. These problems undermine the police department's and the public's confidence in civilian oversight of policing. Although recently enacted legislation will enhance the CCRB's efficiency, its ability to eliminate completely the backlog of complaints and implement new programs, such as conciliation, remains hampered unless adequate funding and staffing are provided.

- The Civilian Complaint Review Board must be appropriated adequate funding to permit its hiring of experienced, investigative staff to process in a more expeditious and effective manner an increasing number of citizen complaints.

Complaints that are sustained by the CCRB do not necessarily result in the discipline of officers. Unlike some civilian oversight agencies, such as the Ontario Board of Inquiry, the CCRB cannot itself impose discipline; it can only recommend it. For instance, as of March 1990, out of 19 police misconduct cases that had been sustained by the CCRB and appealed to the Police Trial Board, the Police Trial Board had rendered a "not guilty" verdict in 17 of the cases, even in cases where the CCRB had recommended dismissal of the officer. In another case sustained by the CCRB, the Police Trial Board's verdict resulted in merely admonishing one of the officers and dismissing charges against the remaining three officers. Thus, the operation of police trial boards has undermined the principles of civilian review, which include impartiality, independence, and representativeness of the community.

D.C. Court System

Non-English-speaking Latinos face barriers to the D.C. court system because of the system's failure to provide them with rudimentary, yet critical, information. There is inadequate signage with instructions or directions to information sources, such as the Office of Interpreter Coordinators (OIC), or the office of the court's bilingual court services specialist. Basic informational brochures are not available in either bilingual or Spanish-language versions. Similarly, many basic forms are not available in Spanish-language versions.

- The courts must provide for conspicuous placement of bilingual or multilingual signs, instructing non-English-speaking persons where to go for additional assistance, at appropriate locations throughout the D.C. courthouse.

- The Executive Office of the Courts, in cooperation with the Mayor's Office, must promptly translate all brochures promulgated by the court system into Spanish. OIC must similarly undertake preparation of bilingual instruction sheets for assistance in completion of necessary court paperwork by non-English-speaking Latinos requesting relief through the court system.

Latinos are underrepresented at all levels of employment in the D.C. court system. There are only 2 Hispanic Superior Court judges out of a total of 59, no Hispanic appellate court judges, and only 1 percent of all Superior Court employees are Hispanic. The D.C. Judicial Nominating Commission, the body best suited for increasing Hispanic representation on the bench, has had no Hispanic members.

- The D.C. Judicial Nominating Commission must increase its efforts to nominate Hispanics to the Superior Court and Court of Appeals.

At present, the D.C. Public Defender Service, the Office of Corporation Counsel, and the D.C. court system as a whole, employ insufficient bilingual staff to assist Latinos entering the D.C. Court System. Limited data exist that provide an accurate count of the numbers of non-English-speaking Latinos entering or coming into contact with either the criminal or civil justice systems in the D.C. courts. Data in existence at this time suggest, however, that these numbers are steadily increasing.

- The D.C. court system and all related agencies providing services within the court system must undertake an integrated, across-the-board needs assessment to determine what areas are most in need of additional bilingual personnel, with the goal of increasing the number of Spanish-speaking employees. The court system and all related agencies must immediately increase the number of bilingual and Latino personnel in court services departments, in particular, lockup, probation, and family division intake; the Office of the Mayor must immediately increase the number of bilingual and Latino personnel to meet obvious needs in the Department of Corrections and the D.C. jail facility. The Public Defender Service must increase its bilingual staff of attorneys in order to provide a broader range of legal representation to Latinos, including for appeals, juvenile cases, etc.

Confusion exists in the D.C. court system regarding its statutory mandate to provide court interpreters for non-English-speaking Latinos and other language minorities in judicial proceedings. There has been no coordination between the Office of Interpreter Services, an executive branch agency, and the Office of Interpreter Coordinators, an office created by the D.C. court system, for the provision of interpreter services, and as a result, interpreter services have been severely underfunded. Moreover, the Office of Interpreter Coordinators, which should be capable of staffing sufficient interpreters for Latinos in court proceedings, is not providing adequate coverage for these proceedings. The responsibility of ensuring that Latinos' rights are protected in court proceedings is shared by the individual's attorney, OIC, OIS, the court system as a whole, and the Mayor's Office; however, OIC alone has had to shoulder both the burden and the criticism for much of that office's shortcomings in previous months. Many of these problems have arisen from a lack of a clear objective and direction in that office, as well as a failure of each entity involved to coordinate responsibilities.

- The Chief Judge of the Superior Court should prepare and promulgate a Memorandum Order, delineating guidelines and safeguards to ensure procedural due process for non-English-speaking defendants at all stages of the criminal justice system, for use by all judges within the court system.

- The Office of Interpreter Coordinators should assign certified court interpreters to individual courts within the Superior Court system in order to supplement the services already provided by OIC and to ensure the presence of an interpreter at critical times during courtroom proceedings, in particular, Saturday arraignment. In light of the budget constraints under which the courts currently operate, as well as the recent cutback on funding in the OIC, the courts could modify implementation of this recommendation by appointing a single interpreter to serve more than one court, depending on the size of the Court's docket on a given date. In the alternative, assignment of interpreters for specific cases to party litigants or defendants should be made to a specific interpreter, with that interpreter having responsibility for making all court appearances with regard to a party, to ensure the same interpreter's attendance at court appearances.

An attorney is in the best position to ensure a client's clear understanding of court proceedings, as well as the conduct required by the Courts pending final disposition of the case. Moreover, the ability of the attorney to establish a rapport with the client and ensure that all facts that are relevant to any issue in the case, including bail setting, defenses, etc., is best fostered through direct conversation, rather than through an intermediary. Interpreter services are provided by the courts to those individuals needing the same, to interpret *during courtroom proceedings*. The defendant will nevertheless be required to communicate with his attorney outside of the courts. While non-English-speaking defendants have no right to an attorney who speaks the same language, there is no doubt that the ability of the attorney to communicate with the client would facilitate the effective functioning of the attorney-client relationship in many respects.

- OIC, in cooperation with the Chief Judge of the Superior Court, should create and provide each court with a list of attorneys qualified to accept bilingual cases, including attorneys who are bilingual, *or* who have bilingual legal secretaries or legal assistants on their staff. Similarly, the courts must refrain from appointing attorneys who are neither bilingual nor have bilingual personnel to represent non-English-speaking defendants. In coordination with the appointment of counsel, the Executive Office of the Courts should create a program of attorney orientation for handling cases involving non-English-speaking clients.

- The court system should provide for an ombudsman to field complaints regarding problems or failures in the court's present system of providing services to communication-impaired persons.

Social Services

The lack of adequate bilingual personnel in the D.C. Department of Human Services (DHS) is a frequent source of complaints by the District's Latino community; yet, the Department has never undertaken a formal assessment of the need for bilingual personnel nor a formal initiative to recruit bilingual personnel for targeted positions within the Department. Telephonic and written communication with the Department of Human Services by the District's Spanish-speaking population is also problematic. These barriers affect equal access to critical services such as medical benefits, food stamps, and child and family services. For instance, the District's Latino community has experienced difficulties in all aspects of reporting child abuse. Despite the formation in 1987 of the D.C. Task Force Against Latino Child Abuse and Neglect, problems still exist today at all steps in the process—from the initial reporting stage to placement of a Spanish-speaking child in an appropriate environment. In applying for public benefits, Spanish-speaking applicants are often assigned to English-speaking caseworkers.

- The Department of Human Services, in conjunction with the Office of Personnel, must conduct a formal needs assessment and initiate active recruitment of bilingual personnel as discussed in the General Recommendations, above.

  In conducting the needs assessment, particular attention must be given to all aspects of reporting child abuse, from the availability of Spanish-speaking personnel on the child abuse hotline to implementation of a system for identifying Spanish-speaking foster care homes before the need arises. Attention to the need for bilingual homes must include remedying the need for bilingual group homes for delinquent youths.

Equal access to public benefits is particularly problematic for the Latino residents of the Mount Pleasant and Adams Morgan communities, not only due to the dearth of bilingual personnel and materials but also to the geographical accessibility of the applicable service center. The applicable service center for these northwest residents is in the northeast section of the city. Nine of the current 11 Income Maintenance Administration (IMA) service centers are in northeast and southeast Washington, and the only full-service center in northwest Washington does not service the Mount Pleasant and Adams Morgan communities. Hispanics have the highest poverty rate of any racial or ethnic group in the District, and many have asserted the need for a full-service IMA center to be located within their community.

- The Income Maintenance Administration must ensure equal accessibility to its services, including geographical accessibility. A full-service Income Maintenance Administration center must be established that would provide equal access to the Mount Pleasant and Adams Morgan communities.

Health Care

Linguistic, cultural, and financial barriers prevent Latinos in the District of Columbia from receiving adequate health services, mental health treatment, and substance and alcohol abuse treatment. Despite an effort to reach out to the Latino community, particularly on the part of D.C. General Hospital and community-based clinics, District of Columbia health facilities still lack adequate numbers of bilingual staff to enable Latinos to access the care they need. D.C. General Hospital, the District's Commission of Public Health clinics, and the Commission on Mental Health Services facilities have few bilingual employees or lack comprehensive bilingual coverage. Furthermore, in efforts to recruit and hire bilingual staff, District health facilities have not emphasized the need for bilingualism nor advertised extensively through Hispanic networks. Staff at District facilities have not made full use of Federal grants that could be used to recruit or train Latinos in health professions.

- District health care facilities, including D.C. General Hospital, the Commission of Public Health, and the Commission on Mental Health Services should take the following steps to overcome language barriers confronting Latino patients:
  - Conduct a formal needs assessment and initiate active recruitment of bilingual personnel as discussed in the General Recommendations, above.
  - Recruit and hire Latino personnel with job vacancy announcements written in Spanish, advertised in Spanish-language newspapers, posted in the Latino community, and sent to Hispanic advocacy groups and business leaders.
  - Review federally funded programs that could target the Latino community to train health professionals, and develop and execute any feasible programs. Volunteer or auxiliary programs should be targeted toward getting more Hispanics to participate in health care or health care programs.

In addition, D.C. General Hospital should ensure that its on-duty staff includes at least one fluent Spanish speaker unencumbered by duties other than interpretation at all times. It should continue, and offer appropriate employee incentives for taking, Spanish courses. The hospital should provide more Spanish-language brochures explaining the procedures for receiving care in the emergency room, locations of departments and clinics, hospital rules and regulations, and parking and food services.

District of Columbia health services fail to provide for outreach to the Hispanic community, involvement of the Latino community in health care planning, and policies or programs to address special Latino health care needs.

- D.C. General Hospital must renew and expand its efforts to increase sensitivity to the Hispanic community's health concerns, to assess their needs, to involve the Latino community in its outreach programs, and to appoint more Latinos to hospital committees. In particular, D.C. General Hospital must ensure Hispanic representation on the Community Relations Committee.

- The District's Commission of Public Health must ensure that its programs are responsive to the needs of the Latino community with particular attention to the alarming growth of AIDS and alcohol and substance abuse. The Commission must establish a program for community involvement in health care planning and invite Hispanic leaders to participate.

Many community-based clinics that provide bilingual health care or mental health care are also overburdened with Latino patients. The District of Columbia provides little or no direct financial support to these clinics. Furthermore, because community-based organizations rely on volunteer and low-paid staff, their facilities may be able to provide more services with less funding than the District's public clinics.

- The District of Columbia must expand bilingual services for health and mental health care (including treatment and education for AIDS and alcohol and substance abuse). It must evaluate the efficacy of District funds spent on public clinics versus community-based organizations that rely on volunteer staff. Additional District funds for health and mental health services must be allocated according to the results of this evaluation to provide bilingual services at relatively low cost to the low-income Latino community. The District must avoid cutting funding to these service providers.

Training and certification requirements limit the pool of bilingual medical personnel. Recent immigrants may include a pool of bilingual medical personnel who have been unable to obtain licenses to practice their health professions in the United States. Licensure to practice medicine sometimes includes additional or more stringent requirements for graduates of foreign medical schools. The District's Department of Consumer and Regulatory Affairs is trying to amend the licensure process to certify more foreign-trained individuals as physician's assistants. Finally, Federal and local training programs can also help foreign-trained medical personnel become licensed health practitioners.

- Federal and local officials must strive to increase the number of bilingual medical professionals.
    - The U.S. Department of Health and Human Services must give higher priority to increasing the number of trained health care professionals who have the linguistic and cultural skills to serve the immigrant Latino community. Programs should aid Hispanic immigrants, particularly foreign-trained health care professionals, in gaining the necessary licensure to practice in medical fields.
    - The Commission of Public Health, Commission on Mental Health Services and D.C. General Hospital should develop programs (relying upon Federal funding when possible) to encourage Latinos to pursue the necessary schooling to achieve careers in the health professions.
    - District licensing boards should review requirements for U.S.-educated and foreign-educated professionals to ensure that their policies do not require foreign-educated professionals to meet unnecessary requirements, while maintaining U.S. professional standards.

Housing

A dearth of safe, decent, and affordable housing affects the entire District of Columbia and is a problem in the Mount Pleasant and Adams Morgan neighborhoods, where many District Latinos live, with the result that many Latinos live in overcrowded and unsafe housing units. The District has a host of affordable housing programs but lacks an effective comprehensive affordable housing strategy to deal with these problems.

Latinos suffer, in particular, from the District's failure to enforce its housing code effectively and sensitively, sometimes with the result that Latino and other residents are evicted from their homes because the District has failed to force landlords to maintain their buildings up to code. Latinos face special difficulties in getting housing code violations in their apartments fixed because the Department of Consumer and Regulatory Affairs, which enforces the housing code, provides inadequate bilingual assistance to limited-English-proficient complainants.

Furthermore, the housing assistance provided by the District in the form of public housing or housing subsidies designed to help District residents obtain decent, affordable housing is for the most part unavailable to District Latinos because of backlogs, long waiting lists, and inadequate bilingual assistance. Community organizations that help Latinos with housing problems have been beset with financial cutbacks in recent years, making it increasingly difficult for them to make a difference. Despite fair housing laws and the efforts of fair housing agencies to enforce these laws, pervasive discrimination in the private housing market compounds Latinos' problems in finding decent, affordable housing.

- The Mayor must direct the Deputy Mayor for Economic Development to conduct a thorough review of the District's affordable housing programs and to formulate, for submission to the District Council, a comprehensive affordable housing strategy designed to provide for the housing needs of all District residents. In formulating the strategy, the Deputy Mayor must specifically address the needs of the Latino community and consider the recommendations laid out in the Latino Civil Rights Task Force report, the *Latino Blueprint*, for preserving existing, as well as creating new, low-to-moderate income housing.[3] In conjunction with the Mayor, the District Council must make the speedy adoption of a comprehensive affordable housing strategy a top priority.

- The District of Columbia must ensure that the District's housing code is enforced effectively and sensitively. In particular, the District government must intensify its efforts against property owners who allow cited violations to continue unabated or who are the subject of multiple citations for violations. Once it has identified properties in violation of code, the District government must use all means available to avoid allowing the properties to decay to the point where the tenants must be evicted for their own health and safety. Possible steps include:
  - implementing a tenant outreach program, including a special outreach effort to the Latino community, to encourage the reporting of violations;
  - undertaking more frequent inspections and reinspections of identified properties;
  - imposing stiff fines for unfixed housing code violations, including daily penalties for the same uncorrected violation;
  - quickly putting liens on properties with severe and persistent housing code violations and unpaid fines and penalties to enable foreclosure of the property and inclusion of the properties in the District's homestead program for possible sale to its tenants;
  - appropriating the necessary funds to the section 5-513 fund so that the District can make necessary repairs rather than evacuate tenants.
  - enacting "repair and deduct" legislation that would allow tenants to fix problems and deduct the cost from their rent; and
  - improving its data collection system to allow routine tallying and reporting of allegations of building code violations, the citations issued, the penalties collected or that remain unrecovered, and whether any resulting liens have been placed against the property, as well as the status of the enforcement of the liens.

In addition, the Department of Consumer and Regulatory Affairs must issue an annual report on the operation of the section 5-513 fund, as required by law.

- The District of Columbia must undertake outreach to the Latino community, hire sufficient bilingual personnel in District housing agencies, and otherwise ensure that Latinos have access to all housing services the District provides, such as providing increased District funding for community organizations serving the Latino community in the housing area.

- The District must vigorously pursue the enforcement of Federal and District fair housing laws.

Educational Opportunity

Until recently the District of Columbia Public Schools (DCPS) have had neither a systematic way of identifying, assessing, and tracking limited-English-proficient (LEP) students in its schools nor a comprehensive policy for providing educational opportunities to LEP students. Because of these deficiencies, DCPS appears to have been in noncompliance with Title VI of the Civil Rights Act of 1964, which requires school districts to rectify any language deficiency so that LEP children can participate effectively in the educational program. Although DCPS runs several model programs for limited-English-proficient students, the quality of the programs offered LEP students in DCPS varies tremendously by school. In most schools, LEP students have unequal access to many educational programs, including special education programs, gifted and talented programs, and vocational programs. Furthermore, qualified bilingual teachers who have been working for DCPS for a number of years are still not in permanent positions.

Although DCPS has made substantial progress with its implementation of a corrective action plan, and its recent hiring of more bilingual/ESL teachers, more must be done. For instance, 3 years after the Superintendent's Task Force recommended that an overall bilingual education policy be adopted and corrective actions taken, DCPS has not yet adopted a bilingual education policy statement and has not yet completed implementation of its corrective action plan. Although bilingual/ESL teachers have been hired, many of them are not yet certified.

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[3] *Latino Blueprint*, pp. 30-31.

- The Superintendent of Schools must promptly ensure equal educational access for LEP students. In particular, DCPS must adopt a new bilingual education policy statement and continue its efforts to implement its corrective action plan as rapidly as possible. Once DCPS adopts its new bilingual/ESL education policy, procedures must be put in place to ensure that the policy is implemented uniformly throughout the District of Columbia schools. DCPS must ensure that LEP students are given equal access to all educational programs offered by DCPS, including special education, gifted and talented, and vocational programs.

- The certification and retention of its current bilingual/ESL teachers must be a top priority for DCPS. To the extent that bilingual/ESL teachers are in temporary positions for more than the 1 year necessary to become certified or to become permanent in the system, DCPS should determine what steps are necessary to bring these teachers into permanent positions and accomplish them forthwith.

As immigrants who speak little or no English, often received little formal education in their home country, survived stressful personal experiences with political violence, separation from family members, and arduous trips to the United States, and whose parents have little ability to help them navigate an American public school system, Latino children need special programs, including, but not limited to, English language instruction, to help them succeed in school. Examples of programs needed are orientation programs for both students and parents, bilingual counseling programs, and multicultural sensitivity training for school personnel and students. Many successful programs for immigrant students are described in *Bridges: Promising Programs for the Education of Immigrant Children*, published by California Tomorrow, a not-for-profit research and advocacy organization that examines ways to deal with diversity. The District does not provide such programs on a general basis.

For instance, many Latino parents are estranged from District schools because, despite improvements, the schools have not consistently provided correspondence in languages other than English or interpreters in school meetings and parent/school conferences. Furthermore, DCPS has only recently begun training programs for school personnel to help them learn about immigrant students—their histories, their cultures—and about how to meet their needs. Latino and immigrant students are likely to encounter insensitivity and a lack of understanding on a regular basis at school. It has even been alleged that some teachers are taking out their frustration at not being able to understand Latino students in unacceptable ways, such as the use of corporal punishment. And it has also been alleged that, when Latino students have been the victims of corporal punishment, Latino parents have been unable to make their concerns in this area heard by school and central administration personnel.

- DCPS must take steps to improve the access of Latino parents and their children to the schools, including stepping up its outreach efforts to Latino and other immigrant parents. In particular, DCPS should consider adopting programs that have been successful in other school districts.

- DCPS must set forth and implement from the top down an effective system for hearing parental complaints, particularly with respect to parental complaints about the use of corporal punishment in the schools. The system must be designed to ensure accessibility for, and accountability to, limited-English-proficient and immigrant parents, and information about the system should be widely disseminated.

Access to equal opportunity in the United States depends to a large degree on the ability to attain an education. Yet, Latinos have disproportionately high dropout rates and disproportionately few students going on to college nationwide, and Latinos are underrepresented at the University of the District of Columbia, the only public university in the District. Despite this imbalance, UDC has made few visible efforts to recruit Latino students or to make them feel welcome on campus. For instance, UDC has an admissions counselor and a multicultural center that help foreign students navigate UDC, but no counterparts to help D.C. resident Latino students. The Hispanic program manager, who is supposed to have this function, has limited stature and authority. As an other example, despite UDC efforts to inform students about documentation requirements for D.C. residency, some resident Latino and other students may not be able to produce the requisite documentation, with the result that they are charged out-of-State tuition rates, a barrier that in most instances means that they are cannot afford to attend UDC. Finally, Latinos are underrepresented on UDC's faculty and staff and in decision-making positions at UDC. In particular, there is no Latino member of UDC's 15-member Board of Trustees.

- UDC must take steps to recruit Latino students, to lower barriers that prevent them from attending college, and make them feel welcome on campus. Specific steps will include:
    - Consolidating in one position the authority to coordinate all programs that effect Latino applicants, students, staff, and faculty, or considering the feasibility of creating an Office for Latino Students to provide for the needs of D.C.-resident Latino students separately from those of foreign students.
    - Devoting more resources to recruiting and retaining Latino students. Steps that could be taken without many additional resources include inviting D.C. students to visit or take courses at UDC, encouraging UDC students to tutor or otherwise help Latino youngsters in the District, and designing programs to recruit Latinos who are no longer in school.
    - Exploring ways to be more flexible in the types of documentation it allows as proof of D.C. residency.

- UDC must actively recruit Latinos for vacant positions when they exist, and the Mayor should appoint a Latino member of UDC's Board of Trustees.

Additional Statement of Chairperson Arthur A. Fletcher, Vice Chairperson Charles P. Wang, and Commissioners Mary Frances Berry, Blandina G. Ramirez, and Russell G. Redenbaugh

The following further observations of the Mayor of the District of Columbia and accompanying text are set forth below for the information of the reader.

Describing how the District's lack of sovereign status and Federal control over District affairs impedes the efficient operation of District government, Mayor Kelly noted that after the District's budget is approved by the Mayor and the District Council, it is further reviewed by the Federal Office of Management and Budget and several congressional committees, before it can be approved by Congress and the President, lengthening the budget cycle to 15 months or longer. Arguing that the process is too cumbersome, she stated, "We cannot exercise responsive financial management under these constraints. . . . [I]t is clear that the District of Columbia's budget faces—on a dollar-for-dollar basis—more scrutiny than that of the Pentagon."[1]

In addition to its charter prohibition on the taxation of nonresidents' income, the District's ability to raise revenue is further impeded by the large proportion of Federal land within its boundaries, on which the District cannot assess property taxes.[2] Mayor Kelly stated that she would gladly forego the Federal payment in exchange for statehood:

> The District of Columbia loses two billion dollars [in taxes] every year, and, in exchange for having our hands tied behind our back, we get 600 million dollars.
>
> ****
>
> If we were a State, I would happily do a quid pro quo. The Federal Government could keep the Federal payment. We could operate as a sovereign power. And we would do far better financially and otherwise.[3]

The amount of the Federal payment is determined each year through the legislative process. Although the District's request is based on a number of statutory factors,[4] the end result bears no necessary relationship to the expenses incurred by the District of Columbia. Over the years the District has sought to gain control over its own affairs and to achieve representation in Federal Government by becoming a State or otherwise gaining full voting representation in Congress. In 1979, the U.S. Commission on Civil Rights unanimously supported the District's efforts, stating that:

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[1] Sharon Pratt Kelly, Mayor, District of Columbia, testimony before the U.S. House of Representatives, Committee on the District of Columbia, November 1991.

[2] The major source of revenue for most localities is land value or property tax. Yet, 56 percent of the District's real property area is tax exempt, with 41 percent owned by the Federal Government alone. In 1991 the tax revenue lost because of Federally mandated exemptions from District property taxes was estimated by the District at $523.4 million. Indices 1991, pp. 3, 121. This estimate of lost tax revenue is, however, subject to some dispute. *See* KPMG Peat Marwick, "Federal Payment" (Washington, D.C., June 1990).

[3] Kelly Remarks, *Hearing Transcript*, vol. I, pp. 40, 41.

[4] They include: tax revenue lost because of the District's limited commercial and industrial property and exempted properties; the relative lack of taxable business income arising from the public sector dominance of the local economy; the cost of providing public services for nonprofit corporations and businesses dealing exclusively with the Federal government; costs of the unreimbursed services that District agencies provide for the Federal government and Federal agencies provide for the District government; expenditure requirements unique to the nation's capital, such as extraordinary security measures and ceremonial functions; the tax burdens on District residents compared with those in surrounding jurisdictions and comparable cities; and the level of Federal grants available to the District in comparison with other State and local governments. *See* District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, § 501, 87 Stat. 774 (1973); District of Columbia, *A New Vision for the City: Making Decision for Our Future*, Fiscal Year 1992 Budget and Revised Fiscal Year 1991 Request, Appendix A; Federal Payment.

> [a] nation which prides itself on its democratic tradition and egalitarian principles such as "no taxation without representation" and "one man, one vote" cannot justify excluding three-quarters of a million people . . . from meaningful representation in Congress.

Fundamental to citizenship is the basic right to vote and to be represented in the workings of government.[5]

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[5] U.S. Commission on Civil Rights, "Statement of the United States Commission on Civil Rights in Support of the D.C. Voting Rights Amendment," July 3, 1979.

Separate Views of Commissioner Carl A. Anderson

> In the last month of that year (1987), 17-year-old Kendall Merriweather was killed on the way to Ballou High School by two teenagers who shot him with a .357 magnum and robbed him of his boombox radio; 15-year-old Sean Smith was shot to death near his Northeast Washington home after a youth stole his new red ski jacket, and 12-year-old Mark Settles and his dog were found lying in a pool of block in their Southeast Washington home. Settles, a Boy Scout and church choir member, was a good friend of Donald Marks. He is the first name on Marks's list of slain friends. . . . On two pieces of notebook paper, Donald Marks has written the names of his friends who have been slain in the last five years: 15 of them. . . . Marks recites from his list of dead friends. "Curtis Bates, he got killed on Halloween night. Somebody shot him wearing a Jason mask. . . . Tony Askew, he got shot with a shotgun outside his house. . . . Stanley Washington. They said he got shot in the head several times. I don't know why. . . . Reginald Blackwell, he got shot in the House of Pancakes up there by the Crystal Skating Rink, shot with an AK-47, closed casket. . . . Jerome, he was selling demos [fake drugs] to a white man; the white man came back and cut his throat. . . . Hippo got shot in a club in Southeast. I can't think of the name. He got shot in the knee, like the lower leg, and he bled to death. . . . Paul Ridley got shot at the gasoline station. The way I heard it, they said it was an argument. He got shot in the head. . . . Omar Bailey. They said he was at his neighbor's house and some guys in the neighborhood, they beat his face in, then shot him in the face. I don't know why."
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> —*Washington Post*, December 29, 1991

These victims are but a few of the 2,011 men, women, and children who have died violent deaths in the urban killing fields of our nation's capital during the past five years. During 1991 alone, 489 murders and 6,107 muggings were reported in Washington, D.C. This wave of violence is inescapably the setting in which thousands of Washingtonians live their daily lives and in which hundreds in the near future will meet violent deaths, thereby being deprived of the first civil right: the right to life.

This is also the setting in which the men and women of the Washington Metropolitan Police Department serve and, according to *The Washington Post* have "had to wage war on street robbers and other criminals with outmoded equipment and under primitive working conditions." The "Post" reports a, "grim bottom line: a poorly equipped, less experienced police force against younger, meaner, more dangerous street thugs." It is a situation in which veteran law enforcement personnel complain that "police recruitment, training, pay, and modern law enforcement technology are sorely lacking in the department."[1] None of this, of course, can excuse the conduct which this Commission insists be remedied now. It does, however, heighten the urgency of a number of the Commission's recommendations and of testimony given before the Commission and referenced in this report.

As several of my colleagues on the commission have taken the occasion of separate views to accentuate the views of certain witnesses before the Commission, I would also like to take the opportunity to highlight the testimony of former D.C. Metropolitan police officer Gary Hankins who stated: "I believe that force sometimes is used when officers don't have that kind of confidence, don't have the knowledge they need about alternatives and may resort to their authority or the color of their authority to hide their fear." Mr. Hankins continued:

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[1] "Mugged: Cops, Robbers and Victims," *The Washington Post*, Dec. 14, 1992, p. A10.

> We do not today, nor have we for at least a decade, adequately trained Metropolitan Police Officers. We do not today, nor have we for at least 8 years recruited aggressively and held our standards up high enough to assure that the people that we're requiring to do the job are able to assimilate the information they need from training and then use it on the street.[2]

Law enforcement must be given the adequate resources for training and equipment which today it lacks in the District of Columbia. This will of necessity entail a reexamination of priorities by the District of Columbia government. In 1990 the Commission on Budget and Financial Priorities of the District of Columbia chaired by Alice Rivlin concluded that the Nation's capital faced a financial crisis and a rapidly widening budget deficit. The Rivlin Commission stated that this widening deficit has had two immediate causes: the slowdown in the city's economy and the drug epidemic with its related crime problem.[3] Clearly, the deteriorating resources of local law enforcement is not unrelated to the epidemic of violent crime in the District which in turn contributes substantially to the transfer of middle-income residents, jobs, and sales out of the District. It is the opinion of this member of the Commission that without the elevation of the needs of law enforcement among the District's financial priorities the Commission's other recommendations contained in this report will not achieve their intended results nor will the District of Columbia secure a long-term solution to its financial crisis.

Furthermore, I must take this occasion to dissent from the Commission's recommendation contained in this report that "The Congress should amend Title 18 section 242 to remove the prosecutive impediment presented by the judicially imposed 'specific' requirement." I dissent for substantially the reasons that Justice William O. Douglas, writing for the Supreme Court in *Screws v. United States*, 321 U.S. 91 (1945), insisted that section 242 be read as requiring "specific intent" as an element of the offense. *Screws* involved the revolting crime in which three police officers beat to death a young African American who had been arrested for theft. In holding that the statute should be applied in such circumstances, Justice Douglas argued that "a requirement of a specific intent to deprive a person of a federal right made definite by decision or other rule of law saves the Act from any charge of unconstitutionality on the grounds of vagueness." As Justice Douglas stated, "the specific intent required by the Act is an intent to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them." In the circumstances of *Screws*, I agree with Justice Douglas that "if sane, [the defendant] hardly may be heard to say that he knew not what he did." But law enforcement personnel are also citizens possessed of civil rights who are entitled, as they serve the community often in life threatening situations, to have adequate notice of the sweep of such statutes. To do any less may endanger both the lives of law enforcement personnel and the citizens they serve. Specific intent is a not uncommon requirement in statutes which carry the range of criminal penalties found in Title 18 section 242. given the lack of an adequate hearing record on this question, it is unwise in my opinion for the Commission to recommend a change in current law so fraught with potential constitutional difficulties.

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[2] Officer Gary Hankins, Fraternal Order of Police, testimony, Hearing Transcript, vol. 2, p. 266.

[3] Commission on Budget and Financial Priorities of the District of Columbia, *Financing the Nation's Capital*(November 1990), p. 111.

APPENDIX A

DEPARTMENT'S RESPONSE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS' DRAFT REPORT ON POLICE-COMMUNITY RELATIONS

The following is the Department's response to the United States Commission on Civil Rights' draft report pertaining to the state of police-Latino community relations. After reviewing the Commission's report, the Department recognizes that much remains to be done to improve the delivery of police services to the Latino community and to negate the less than positive perception among many Latinos, that the Department is insensitive to the community's needs. The report recognized that the Department has hired more Latinos than any other District agency. The report also pointed out that the Department has done much in the areas of training. However, the Department wishes to take this opportunity to correct some of the misconceptions and false conclusions set forth in the Commission's report. Due to the length and comprehensive nature of the Commission's report, as well as the general nature of the allegations made in the report, the Department is not able to provide as detailed an analysis and response as it would have liked within the period of time allowed under the Commission's rules. Nevertheless, the Department has attempted to respond to the broad areas addressed by the Commission.

POLICE MISCONDUCT IN THE METROPOLITAN POLICE DEPARTMENT

The Department takes strong exception to the Commission's

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implication that the testimony of two attorneys and two young Latinos is evidence of widespread police mistreatment of Latinos. There is simply no evidence that Latinos as a group are mistreated by the officers of the Third and Fourth Districts.

The Commission, citing a report by the D.C. Latino Civil Rights Task Force, The Latino Blueprint for Action, Final Recommendations to the District of Columbia Government, repeats an assertion made therein that police abuse and insensitivity are pervasive in the District of Columbia. As further evidence of this perception the Commission cites the testimony of two attorneys active in the Latino community. One attorney testified that there was an "attitude" within the Latino community that Latinos may be subject to police misconduct. As mentioned above, the Department is aware that such an "attitude" or perception exists, however, this is not evidence that the Department as a whole routinely mistreats Latinos. The fact that a perception exists is a problem that the Department takes seriously. The Department has taken many steps within its limited resources (some identified in the Commission's report) to eliminate this negative view.

The other attorney testified that some officers use derogatory language in interacting with Latinos. The individual officers however, are not identified. Presumably, the attorney is well aware of the right afforded the public to present to the Civilian Complaint Review Board (CCRB) a complaint that an officer has used demeaning language. The Department does not condone in any fashion the use of demeaning language by its officers towards Latinos and other members of the public. In a police force of over 4,000 officers, invariably there will be some officers who abuse the public trust by engaging in such conduct. When these officers have been identified and brought before the CCRB and found guilty, the Department has in the vast majority of cases sustained the recommended penalty. It cannot be said that the Department or the Third and Fourth Police Districts tolerates the use of demeaning language or that the use of racist terms is widespread.

As further evidence of police misconduct the Commission cites the testimony of two young male Latinos who recounted personal negative experiences with police officers. The testimony the Commission has excerpted is nothing more than anecdotal hearsay accounts of these witnesses' alleged encounters with police officers.

ARRESTS FOR DISORDERLY CONDUCT

The Department disagrees strongly with the Commission's conclusion that officers are using the disorderly conduct offense in order to harass or mistreat Latinos. The Commission asserts improperly that police misconduct is evidenced in the fact that no charges were brought in sixty-five percent of the disorderly conduct arrests that occurred in the first quarter of fiscal year 1991. The Commission unjustifiably concludes that this is a "problem" and that disorderly conduct arrests can be a tool of harassment or abuse.

The Commission failed to analyze why many disorderly conduct arrests do not result in a prosecution. Had the Commission undertaken such an analysis, it would have found that prosecutions for this offense rests within the total discretion of the District's Office of the Corporation Counsel. As the City's prosecutor, the Corporation Counsel may decide to proceed with a criminal prosecution or dismiss the charge for any number of reasons. Some of the reasons for not prosecuting disorderly conduct arrests are: reluctance of non-police witnesses to testify at trial; unavailability of non-police and police witnesses for a scheduled trial date and the court's refusal to reschedule a new trial date; need to utilize limited resources for more serious offenses such as indecent exposure, drunk driving, welfare fraud, medicaid fraud and housing code violations; and reluctance among many judges to hear disorderly conduct cases because they feel such cases do not merit the court's attention as much as other types of criminal cases.

The Commission has not identified any evidence which suggests that the dismissal rate for disorderly conduct arrests is an indication that officers are using this offense as a tool of harassment. The Commission notes that a significant number of CCRB complaints arise from disorderly conduct arrests. This is not surprising when one realizes that most citizen complaints arise from those occasions which generate the greatest number of police-citizen contacts such as disorderly conduct calls and traffic stops.

Additionally, the nature of the disorderly conduct offense necessarily implies that one so charged has failed to conform his actions to the dictates of the law and the community expectation of peaceful conduct. Many persons arrested for disorderly conduct are either under the influence of drugs such as alcohol or in a highly emotional state requiring some degree of force in order to effect an arrest. The fact that some persons have filed excessive use of force complaints arising from disorderly conduct arrests does not mean that officers are routinely using this offense as a "tool" of abuse.

The Commission's reference to five CCRB cases of excessive force (dating back to 1983) as evidence that officers are using disorderly conduct arrests as a form of harassment or abuse is an improper and unfair indictment of the majority of the officers who perform their duties in a professional and lawful manner. A few instances of proven misconduct over a nine year period do not evidence a pattern and practice of police misconduct. Examining the number of CCRB complaints in light of the total number of police calls for service (literally over a million calls per year) one can only conclude that the number of such complaints is extraordinarily low. This can mean only that the overwhelming majority of residents consider their interactions with officers to have been conducted in a professional manner.

STATISTICAL ANALYSIS OF CITIZEN COMPLAINTS

The Commission improperly analyzed and drew erroneous conclusions from the number of citizen complaints filed with the CCRB. The Commission analyzed data from the CCRB and found that for a four year period, Latinos had filed fifty-two (52) complaints with the CCRB. The Department has no reason to doubt that the reason Latinos have filed so few complaints is due to fear of officers. However, to suggest, as the Commission does, that the total number of CCRB complaints is directly related to the extent of police misconduct towards Latinos is not supportable.

The Commission has unjustifiably equated the filing of a complaint as proof of police misconduct. The Commission improperly extrapolates from the data showing an increase in the total number of complaints filed, that there is a "pattern and practice of police misconduct" within the Third District in particular. The filing of a complaint is simply an individual's allegation of police misconduct. The complaint must be fully adjudicated before the CCRB before one can argue that there is or is not proven evidence of police misconduct.

In order to obtain a more accurate assessment of the level of police abuse one must examine the disposition rate at the CCRB. During fiscal years 1982-1991, the CCRB received 3,539 complaints of police misconduct. Of this number only 150 complaints were deemed to be justified by the CCRB. This represents a 4.24 percent sustained rate or a dismissal rate of

95.76 percent. The data shows clearly that the majority of the complaints filed at the CCRB do not warrant action. Thus, to interpret, as the Commission does, that an increase in the number of complaints filed yearly is reflective of the extent of police misconduct is not warranted. Contrary to the Commission's interpretation that the increase reveals a "pattern and practice of police misconduct" and that the evidence of this is "overwhelming", the Department believes that the increase can be attributed to an increased awareness on the part of citizens that there is a forum available to them to present complaints.

Substantiation for this is the fact that many persons who file CCRB complaints are represented by attorneys at the hearing and who later file civil suits on their behalf. Regardless of the reasons why there has been a slight increase in the number of CCRB complaints filed, the fact remains that such complaints do not show that officers are mistreating people in general or Latinos in particular.

In commenting on officers who have multiple complaints filed against them, the Commission failed to show how these officers have impacted police-Latino relations in the Third District or elsewhere. The Department is acutely aware that officers with multiple complaints should be looked at closely for signs that they require at a minimum counselling or in extreme cases should be removed from public contact until the complaints against them have been resolved. The Commission has not presented any information which suggests that the Latino community has been unfairly treated by these officers.

THE DEPARTMENT'S PROGRAMS TO PREVENT POLICE MISCONDUCT

Training

The Department believes that additional training for officers is necessary in human relations, ethics and other subjects. The Department has already taken the initiative in revamping the training of officers in accordance with the Mayor's stated emphasis on improving the quality of officer instruction. The Department is presently developing a course in human relations/sensitivity training which encompasses significant input from the diverse ethnic population of the City. This course is in addition to the 16 hours of human relations training which is already a part of the curriculum.

The Department has recently expanded the training curriculum from 20 to 23 weeks. In addition to sensitivity training, this supplemental coursework will focus on the use of force, disorderly conduct arrests, use of the baton and handcuffs, restraint techniques and firearm retention. It is the goal of the Department to have all officers receive periodic re-training covering all subjects which impact on their positions as law enforcement officers. Limited resources and the state of the City's finances makes this an increasingly difficult goal to achieve quickly. This fact does not diminish the Department's resolve to have the most highly trained and professional workforce possible. With respect to ethics training, all officers would have received at least eight hours of such training by the time they become eligible to be promoted to the rank of sergeant or as a first line supervisor. The fact that the First Line Supervisor Program for sergeants does not include ethics training is a recognition that at this level all sergeants would have already received considerable training in this area.

EARLY WARNING SYSTEMS

As a result of extensive planning and review, the Department on September 4, 1992, put in place an early warning tracking system to identify and assist sworn members who exhibit behavioral patterns that negatively affect the Department's relationship with the community and are detrimental to their careers. This system consists of three parts:

1. Monitoring - the behavior of members is tracked to identify those who may be experiencing problems;
2. Evaluation - the member's behavior is examined to identify any problems that exist and the type of assistance that may be needed; and
3. Assistance - when needed, aid is provided to the member to change the negative behavioral patterns.

The Department's Office of Professional Standards is charged with the responsibility of maintaining the monitoring component of the system by examining all citizen complaints (PD Form 99), complaints filed with the CCRB, civil lawsuits resulting from Department-related activities, all instances in which an officer has been recommended for adverse action and all cases in which an officer's police powers have been revoked as a result of a traffic or other misdemeanor arrest.

Department Investigations of Misconduct Cases and Penalties

Although the CCRB has primary jurisdiction to investigate allegations of harassment, demeaning language and use of excessive force, the Department may investigate any and all cases in which there is evidence to suggest that an officer has violated the criminal laws in his or her dealings with the public. Additionally, the Department refers to the United States Attorney all cases in which there may be a violation of criminal law. If the United States Attorney declines to prosecute, the Department refers the matter to the CCRB for their review.

With respect to the penalties meted out to officers found to have engaged in misconduct, the Commission incorrectly asserts that the Department does not consider the use of excessive force as warranting as severe a penalty as tardiness. The Commission has misinterpreted the provisions of the Department's Table of Penalties Guide. The offense provision covering tardiness is offense no. 10 which provides: "A.W.O.L., i.e., reporting late for duty more than six times within a one-year period or absence from duty without official leave for more than eight consecutive hours." The penalty range for this offense is reprimand to removal from the Department. The penalty range for using unnecessary and wanton force is significantly higher in that for a first offense an officer may be suspended for three days up to removal. The Commission incorrectly interpreted offense no. 21 (Undependability) as meaning that a first offense of tardiness will subject an officer to a penalty of removal. The true meaning of this offense is that if the Department takes adverse action (the highest level of discipline) against an officer three times within a twelve month period, a fourth adverse action may result in an officer's removal. In other words, an officer must have been disciplined on four separate occasions before he or she is subject to removal. The Department views officer misconduct towards the public as an extremely serious matter. As stated previously, the Department has only on rare occasions not followed the penalty recommendations of the CCRB.

ACCREDITATION FOR LAW ENFORCEMENT AGENCIES

On October 1, 1991, the United States Congress appropriated funds for the Department to initiate and complete the accreditation process. Former Chief of Police Isaac Fulwood, Jr. testified at the Commission hearing that he felt that law enforcement accreditation was an appropriate process for the Department to undertake. Since the Commission hearing, the Department has committed significant resources to initiate and complete the accreditation process which, if successfully completed, will be effective for five years. The accreditation process itself generally takes two to three years to complete for an agency the Department's size. A significant part of the process encompasses an analysis by the accreditation commission of the Department's organization; management and administration; personnel structure; training; law enforcement operations; technical services; and prisoner and court related activities.

Once this review is completed the commission will determine whether the Department will be accredited and if not, what actions are necessary to achieve accreditation.

EQUAL EMPLOYMENT OPPORTUNITIES FOR LATINOS IN THE DEPARTMENT

The Department's committment to increase the number of Latino officers is clearly shown by the fact that it employs more Latino employees than any other District government agency. The Department is confident that the number of Latino officers will increase further as the Department continues its recruiting and outreach efforts. For example, the Department is presently preparing to administer a special entrance examination for bilingual persons only, which will be given on December 5, 1992. The Department expects to test approximately 350 persons at that time. As more Latinos decide to pursue a law enforcement career with the Department, more Latinos will study and sit for the civil service promotional exams.

LATINO ACCESS TO POLICE SERVICES

The Department has increased the level of Latino access to police services by deploying the majority of Spanish speaking officers in the Third and Fourth Districts. As more Spanish speaking persons are hired they will supplement the number of bilingual officers in these Districts. Additionally, the Department has maintained for some time, in these Districts, Hispanic service centers to assist the City's Spanish speaking citizens.

Also, the Department, in an effort to increase the number of bilingual officers, has paid for Spanish classes for over 500 officers. The Commission is accurate in its assertion that no officers have been relieved from duty to attend these classes. Some officers have been relieved from duty for these classes while others have not because of manpower requirements at the various districts.

RECRUITMENT

As previously stated, the Department has the most impressive record of the entire District government in the hiring of Latinos. The Department is continually striving to improve our record by reaching out to interest qualified Latinos to pursue a career with the Department. It is hoped that the upcoming special entrance exam will identify a significant number of Latinos who may be hired as officers. At the time of the Commission hearing, there was no regularly assigned Latino officer in the Recruitment Branch. There presently are two Latino officers assigned to this branch.

The Department has also hired and is presently training 8 Latinos as police dispatchers. Efforts are ongoing to fill one vacant dispatcher position with a Latino. In addition, the Department has contracted with a language interpreter service to assist dispatchers with communicating with persons of different ethnic backgrounds.

POLICE TRIAL BOARDS

The Commission has totally ignored the testimony of Chief Fulwood who stated that the Department has only on rare occasions not followed the recommendations of the CCRB. If it is accurate that CCRB recommendations for termination have not been followed by the Department in 17 cases, this confirms Chief Fulwood's testimony that in some cases there is a difference of opinion as to the merits of some cases. This represents an overwhelming affirmance of the CCRB's findings and conclusions in the hundreds of cases that have been referred to the Department. The Commission has not identified any evidence that can lead one to the conclusion that the Department seeks to subvert the effectiveness of the CCRB by overturning their recommendations.

The Commission has again merely commented on one or two CCRB cases as evidence of a pattern. The Commission assumes that all recommendations of the CCRB should or must be accepted. The Commission has failed to take into account that the Department cannot simply terminate officers without giving them constitutionally guaranteed due process rights. Additionally, the Commission has overlooked the fact that officers also have rights pursuant to a collectice bargaining agreement between the City and the police union. Among these is the right to appeal a trial board decision (if it is adverse) to the Chief of Police. If the Chief of Police denies the appeal, the officer may appeal further to either a labor arbitrator or to the District's Office of Employee Appeals. If an arbitrator's decision is adverse the officer may appeal to the Public Employees Relations Board and from there to the courts.

The exercise of these rights is necessarily a time consuming process as arbitrators, review boards and the courts view the termination of an employee as a serious matter. The members of the CCRB do not necessarily take into consideration the rights enumerated above and from time to time considers evidence that the Department feels is inappropriate or not sustainable under current administrative and labor laws. The record shows, however, that the Department rarely disagrees with the CCRB.

CONCLUSION

The Department hopes that this response will prove helpful to the Commission in accurately reporting the Department's committment to improving the state of police-Latino community relations. The Department also hopes that its efforts as well as the efforts of those outside the Department to address this issue will prevent the type of disturbances that visited this City a year ago.

Subscribed to and sworn before me on this 9th day of November, 1992.

Addison L Da

Addison L. Davis
Acting Chief of Police

My Commission expires on
4-30-97

Notary Public

[illegible]

APPENDIX B

October 28, 1992

Carol McCabe Booker, Esq.
General Counsel
Unites States Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Dear Ms. Booker:

I am in receipt of your letter dated October 16, 1992, wherein you describe the Commission's regulations in reference to incriminated persons. I welcome the chance to respond and offer the following comments as a result of reading chapter 2, pages 1 through 9, of your report.

From the document it is clear that the Commission does not understand the significance of a complaint against a police officer. You simply must not consider a complaint that has not been substantiated as negative, or detrimental, or discriminatory. For a citizen or illegal alien to come to a police station and report an incident that he/she believes is wrong is a major community relations triumph. If the act of complaining is to be considered a civil rights violation, or negative in any way the police will discourage it causing considerable damage to police/citizen community relations. Information from complaints is vital for training and retraining, and to catch personnel problems early so that corrective action can be taken. If you do not believe that police can, if they are inclined to do so, control the number and types of complaints being filed you do not know the police.

As the Commander of the Third District I was aware that I had to have feedback from the citizens to whom I was responsible. This feedback must come from the citizens themselves. The only way a commander can be sure of that feedback is to hear it himself from the citizens. If they are afraid to come to the station or to meet with the Police there will be no feedback of any kind. If I took your lead in this matter I would be forced to conclude that the absence of complaints would mean that the police are professional and are not abusing or violating citizens rights. This is of course not so. I encouraged people, all people, to complain at any time they felt that they had been wronged by the police. As a result of an incident at Howard University Morgan State ball game, I went on television and ask every student who felt that they were abused by the police on the night in question to come forward and submit a complaint to me with the assurance that I would see that a through investigation would be conducted. Mr. Gary Hankins, Chairman of the Police Union's Labor Committee complained to the Chief that I was soliciting complaints against officers and that I should refrain from doing that. I feel strong about this issue, and believe that only a complaint that has been substantiated can be considered negative, or discriminatory. More over, I feel that the more complaints a unit receives reveals more than just the possibility that officers are doing things that they should not be doing. The possibility exist that the unit with the most complaints might well be the unit with the smallest number of confirmed complaints.

Sincerely,

Edward J Spurlock
Edward J. Spurlock
Deputy Chief, Retired

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